



MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney
 Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Action:** Bill 34-12, Stormwater Management – Water Quality Protection Charge

Transportation, Infrastructure, Energy, and Environment Committee recommendation: enact with amendments (2-0-1, Councilmember Floreen abstaining).

Bill 34-12, Stormwater Management – Water Quality Protection Charge, sponsored by the Council President at the request of the County Executive, was introduced on November 27, 2012. A public hearing was held on January 15, a Transportation, Infrastructure, Energy and Environment Committee worksession was held on March 11, and an initial Council worksession was held on March 19.

Bill 34-12 would

- subject all properties not otherwise exempt under state law, mainly non-residential properties, to the Water Quality Protection Charge;
- allow certain property owners to obtain a credit for on-site stormwater management equal to a percentage of the Charge set by regulation;
- exempt owner-occupied residential property owners that can demonstrate substantial financial hardship from the Charge; and
- phase-in increases to the Charge.

This Bill would implement a 2012 state law, which is shown on ©17-26. The Bill as introduced appears to be generally consistent with the state law. A summary of steps taken in other Maryland jurisdictions to implement this law, prepared by Jeff Meyers of the Howard County Council staff, is on ©68-72.

As some of the issues discussed below indicate, many relevant policy issues arise in the context of the implementing regulation, Regulation 17-12, which was submitted in draft form for review by the Transportation, Infrastructure, Energy, and Environment Committee and later formally submitted to the Council on April 4. The Committee, at its March 11 worksession on this Bill, also discussed the draft regulation and the issues it raised.

Background: Water Quality Protection Charge

In 2001, the Council approved Bill 28-00, which created the stormwater management fund (called the Water Quality Protection Fund). This fund is supported by the annual Water Quality Protection Charge. The charge is based on an equivalent residential unit (ERU), defined as 2,406 square feet (which was the calculated statistical median of the total horizontal impervious area of developed single-family detached residences in the County at the time the fund was established).

The ERU rate is the amount each property owner of a single-family detached home currently pays annually for each property owned. Townhouse owners pay 1/3 of an ERU, under the assumption that townhouses on average have less impervious area per unit than detached homes. Condominiums and apartments are assessed based on actual imperviousness that is converted to an ERU number. "Associated" non-residential properties (i.e., properties that drain into facilities that also serve residential properties) are also charged based on actual imperviousness.

The Council is required to set the ERU rate each year by resolution. The FY13 rate is \$92.60. For FY13, the County billed an estimated 248,930 ERU's. The net annual revenue¹ generated per dollar charged per equivalent residential unit (ERU) is approximately \$233,000. Overall, for FY13, the Water Quality Protection Fund is assumed to raise about \$23 million from the charge.

Revenue from the County's excise tax on disposable shopping bags also goes to the Water Quality Protection Fund. The FY13 budget assumes \$561,640 in revenue from this source.

Background: NPDES MS4 Permit

Revenue from the Water Quality Protection Fund is used to fund the activities required under the County's National Pollutant Discharge Elimination Systems Municipal Separate Storm Sewer System (NPDES MS4) permit.

DEP is the lead agency for Montgomery County with regard to the NPDES MS-4 permit. The Maryland Department of the Environment (MDE) is the State agency responsible for approving NPDES permits, which are required as part of the Clean Water Act enforced by the Environmental Protection Agency. The current 5-year permit was issued by MDE on February 16, 2010.

The major requirements of the County's NPDES-MS4 Permit are:

¹The charge is paid by Gaithersburg residents, but the revenue received is passed back (minus an administrative fee) to the City of Gaithersburg, which spends the revenue on stormwater management-related projects in the City.

1. Complete restoration efforts for an additional 20 percent of the County's impervious, urban surfaces not currently restored to the maximum extent practicable. This is the primary driver of CIP costs under the permit.
2. Support regional strategies to reduce trash and increase recycling, as set forth in the Trash Free Potomac Watershed Initiative 2006 Action Agreement, to eliminate trash in the Anacostia and Potomac Rivers.
3. Implement TMDL limits to restore impaired waterways in the County by developing and implementing plans to reduce nonpoint source pollutant loads (e.g., from stormwater). Ensure anti-degradation measures for high quality waters (Tier II waters) within the County, including appropriate reviews prior to approval of capital projects, water/sewer plan amendments, and any development with the potential to affect water quality and downstream water quality.
4. Establish long-term schedules for identifying sources of pollution and water quality improvement opportunities for all watersheds in the County.
5. Use environmental site design/low-impact development as a method to capture stormwater by improving the County's stormwater management laws/regulations and modifying the County's planning and zoning codes as needed. Environmental Site Design (ESD), as outlined in Chapter 5 of the Maryland Stormwater Management Act, is required to be implemented to the maximum extent practicable.
6. All new construction in the County must follow the State stormwater controls as defined in the Stormwater Management Act of 2007. Chapter 5 of the Stormwater Management Act on Environmental Site Design requires developers to maintain after development, as nearly as possible, the predevelopment runoff characteristics to the maximum extent practicable.
7. Detect and eliminate illegal, non-stormwater discharges into the storm drain.
8. Involve and engage the public in the process of stormwater control.

A portion of the Water Quality Protection Fund is also appropriated to the Montgomery County side of M-NCPPC for its water quality activities required to meet separate permits.

The cost implications for implementation of the current permit are substantial. In the fall of 2011, DEP estimated the permit costs at about \$305 million through 2015 and nearly \$1.9 billion through 2030.

Issues/Committee recommendations/Tentative Council decisions

At its worksession on March 11, the Transportation, Infrastructure, Energy, and Environment Committee discussed the following issues before voting (2-0-1, Councilmember Floreen abstaining) to recommend enactment of this Bill with amendments. The Council discussed these issues at its first worksession on March 19 and tentatively agreed with most of the Committee recommendations, except as noted below.

1) Revenue As the state law requires, this Bill would expand the scope of the Water Quality Protection Charge to virtually all non-government properties, including many non-residential properties that do not currently pay the Charge. (For background and rationale, see

the Legislative Request Report and County Executive memo on ©11-16.) The amount of the Charge must be based on “the share of stormwater management services” provided by the County to the property. Most of the details of this expansion, and how the Charge will be applied to residential and non-residential properties, are contained in Regulation 17-12 and are discussed below in the **Remaining Issues**.

The original fiscal and economic impact statements on ©27-31 do not contain any revenue estimate. (For revised statements, see ©51-57.) The Executive’s proposed operating budget included a revenue estimate of \$22.34 million from the Water Quality Protection Charge.

2) Credits As the state law directs, the Bill allows a property owner to apply for a credit for on-site stormwater management systems or best practices. However, the Bill as introduced did not expressly require that a credit must be granted if the property owner meets certain conditions. The draft regulation also used looser “may” language, implying that a property owner’s request could be denied even if it meets the applicable criteria. Council staff questioned whether the credit was intended to be an entitlement, or could it be subject to availability of funding or an annual cap? **DEP staff confirmed that the credit must be granted to each eligible applicant, and the Committee recommended amendments to reflect that intent. (See ©7-8, lines 160-170.) Amendments recently submitted by the County Attorney include more specific requirements to receive these credits (see ©102).**

To receive a credit in FY14, the Bill originally provided that a property owner would have to apply to DEP by July 31. Council staff questioned whether this early deadline was necessary. **The Committee recommended moving that deadline to September 30, along with the deadline to apply for a hardship exemption (see ©10, lines 233-237).**

3) Grant program The Stormwater Partners (see testimony, ©37-42, especially ©38-39) urged the County to expand the credits, publicize them better, and also start a parallel grants program for non-profit organizations. Similarly, the Montgomery Soil Conservation District proposed a grant program for rural areas (see testimony, ©43-48).

Before the Committee worksession DEP submitted an amendment to authorize a grant program for non-profit organizations that would help in water quality protection or improvement activities. The Committee accepted this amendment (see ©6, lines 124-134).

4) Private roads The Committee briefly discussed how privately owned roads should be charged under the new law and regulations. Several years ago DEP moved to assess the Charge to the Montgomery Village Foundation for its privately owned roads, but stopped (for the Foundation only) when the Foundation protested. The state law does not exempt private roads as a class of property, but they could be eligible for stormwater management credits. **The Committee did not recommend any amendment on this issue.** After the first Council worksession, the Foundation proposed an amendment to remove their private roads from the definition of “impervious surface” (see ©2, lines 9-15). In Council staff’s view, this approach would effectively amount to an exemption from the Charge, which the state law does not allow.

5) Federal and municipal facilities DEP assumes that federal facilities must pay this Charge (based on an amendment to the federal Clean Water Act inserted by Senator Cardin several years ago). However, the County has not received any payments from any federal facilities. The Bill (see ©2, lines 17-20) includes federal facilities in the law's definition of "person" only "to the extent allowed by law".

The US Navy recently sent a letter to the Council (but not to Executive staff) arguing that the Water Quality Protection Charge should not apply to federal agencies. See ©49-50. The Committee referred this letter to the County Attorney for an appropriate response.

The state law provides that the County cannot charge State and municipal facilities, and vice-versa. The state law (see state law subsection (e)(2) on ©20) expressly exempts property owned by the state, a County, a municipality, or a volunteer fire department, from the Charge. In its testimony (see ©34-36), Rockville urged the County to budget and pay the amounts the City believes are past due from the County under the City's own stormwater fee, but this part of the state law would appear to preclude the County from doing so (at least for future charges).

The current County law contains a limited municipal exemption, covering property *in* a municipality (as distinct from property *owned by* the municipality) with a similar charge. **The Committee agreed that this provision should be modified to conform to the state law's broader municipal exemption (see state law subsection (g)(2) on ©23).** This is done by amending §19-35(g) to delete the current language and reflect the state law's process for notice to and from municipalities (see ©9, lines 190-197).

Remaining Issues/Amendments

6) Residential properties Charge The existing Charge for single-family residential properties has only two tiers: one for detached homes, which pay 1 Equivalent Residential Unit (ERU); and one for townhouses, which pay 1/3 of an ERU. As proposed, Regulation 17-12 would create 7 tiers, based on the actual amount of the property's impervious surface. DEP would calculate each property's impervious surface by GIS mapping. These tiers are defined in the regulation (see ©60-61 and the tables on ©15 and ©90). Tier 1 properties would pay 33 percent of an ERU (the same charge currently paid by townhouses). Tier 7 properties would pay 300 percent of an ERU.

Under this tier structure, 90% of residential properties would pay the same or less than they are paying now. Council staff considered whether Tier 3 (which includes about half of all residential properties) should be split so that the properties in each tier would be more equitably distributed. DEP staff calculated that this approach would increase the proportion of properties paying more to about 53%.

The tier structure recommended in Regulation 17-12 is far more progressive than the current charge, since residential properties with larger impervious areas will pay more than other residential properties. Under the current structure, for example, a 25,000 square foot mansion with long driveways, a guest house, and a tennis court pays the same annual charge

(1 ERU) as a small bungalow. **For this reason, Council Staff believes the new tiered approach is far superior to the existing rate structure.**

7) Phase-in DEP proposed to phase in over the next 3 fiscal years the increase in the fee to formerly uncovered non-residential properties. **The Committee recommended extending the phase in period to 5 years (see ©9-10, lines 205-232). DEP continues to propose a 3-year phase-in.**

The effect of a longer phase-in period, assuming a constant revenue target yield, is to transfer more of the Charge to small-to-medium sized residential properties, to which the phase-in would not apply because they already pay the Charge.

8) Residential hardship exemption The state law directs counties to establish an exemption for “a property able to demonstrate substantial financial hardship” (see state law subsection (j)(1) on ©26). The State law leaves it to the jurisdiction to determine the eligibility criteria for this exemption. As the state law requires, Bill 34-12 would allow an exemption in cases of substantial financial hardship, but the Bill does not define hardship. **The Committee discussed whether “hardship” should be defined in the law, or decided by criteria set by regulation, and opted for the latter.**

The Committee discussed, but left for the final regulation, the following issues regarding the hardship exemption: The regulation sets the limit at 100% of the USDHHS poverty guidelines. Is this the best line to draw? Is a better reference already available, such as the energy assistance program (MEAP) -- i.e. if the applicant is approved for MEAP, then could they automatically be eligible for the County credit; which would mean less work for the County? Also, should the County use a sliding eligibility scale, rather than a single cutoff under which an applicant is either 100% eligible or 100% ineligible?

Regulation 17-12, as transmitted to the Council, includes two separate hardship exemption tests: one for owner-occupied residential properties and one for non-profit organizations. For the residential hardship exemption, hardship is defined as the property owner’s gross household income not exceeding 100% of the poverty guidelines published by the U. S. Department of Health and Human Services.

Council Staff concludes that the 100 percent of the poverty guideline threshold is too low. For a family of 3, the threshold is \$19,530. The County and State often use multiples of the poverty guideline to determine eligibility for various programs. For example, the Maryland Energy Assistance Program (MEAP) eligibility guidelines are 170% of the Federal poverty guideline. The state limit for pre-kindergarten services is 185% of the federal guideline. The County emergency medical services fee law sets the waiver limit at 3 times (300% of) the federal poverty guideline.

Council Staff Recommendation: Increase the residential hardship exemption ceiling to at least 170% of the poverty guidelines.

9) Treatment of non-profit organizations As introduced Bill 34-12 would have limited the hardship exemption to owners of owner-occupied residential properties, while the state law does not so limit it. **After discussion the Committee recommended that the hardship exemption should also be available to non-profit organizations under criteria set by regulation (see ©8, lines 171-179). Amendments submitted by the County Attorney include a definition for non-profit organization that would limit the term to organizations that are exempt from federal income taxes under Internal Revenue Code §501(c)(3) (see ©102); Council staff concurs with this amendment.**

For non-profit organizations, the regulation would set a threshold of 0.4 percent of gross income. If the charge would exceed this percentage, the organization would be fully exempted. The table below shows what the cap would be based on gross income at a .2% .3%, and .4% cap:

Hardship Cap for Non-Profits Based on Gross Revenues

| Non-Profit Gross Revenues | Percent of Gross Revenues | | |
|--------------------------------------|----------------------------------|------------------------|------------------------|
| | Alternative 1*** | Alternative 2** | Exec Reg 17-12* |
| | 0.20% | 0.30% | 0.40% |
| 100,000 | 200 | 300 | 400 |
| 200,000 | 400 | 600 | 800 |
| 500,000 | 1,000 | 1,500 | 2,000 |
| 1,000,000 | 2,000 | 3,000 | 4,000 |
| 2,000,000 | 4,000 | 6,000 | 8,000 |
| 3,000,000 | 6,000 | 9,000 | 12,000 |
| 5,000,000 | 10,000 | 15,000 | 20,000 |
| 10,000,000 | 20,000 | 30,000 | 40,000 |

*Based on Equivalency for 100% of the Federal Poverty Guidelines for a Family of 3 Compared to 1 ERU

**Based on Equivalency for 170% of the Federal Poverty Guidelines for a Family of 3 Compared to 1 ERU

***Based on Equivalency for 250% of the Federal Poverty Guidelines for a Family of 3 Compared to 1 ERU

The .4% cap recommended by the County Executive is roughly equivalent to the residential cap at 100% of the poverty guideline for a family of 3 paying 1 ERU. **Council staff believes that a cap set at .4% of revenues appears high and suggests either a .2% or .3% cap level.** Since Council staff recommended increasing the residential cap to 170% of the poverty guideline, an equivalent rate for the non-profit exemption would be .3 percent.

Council Staff Recommendation: Reduce the gross percentage of income cap from .4% to .3% of gross revenues. This amount maintains some parity with the residential exemption ceiling (which Council Staff would increase as well).

Since non-profit organizations are assessed as non-residential properties and charged based on actual imperviousness for what could be large amounts of surface areas, the stakes of whether the organization pays the Charge or not can be quite high. **In this context, Council Staff recommends that the hardship exemption should be a partial exemption (for the amount of the charge that exceeds the cap) rather than a full exemption.** The table below

highlights how the Regulation could lead to far greater inequities in what similar sized non-profits would pay, compared to the Council Staff recommendation.

| Assumptions | Executive Regulation | | Council Staff Recommendation | |
|-----------------------------|----------------------|---------------|------------------------------|---------------|
| | Non-Profit #1 | Non-Profit #2 | Non-Profit #1 | Non-Profit #2 |
| Gross Revenues | 500,000 | 500,000 | 500,000 | 500,000 |
| 0.3 Percent Cap | 1,500 | 1,500 | 1,500 | 1,500 |
| Imperviousness (in sq feet) | 40,000 | 38,500 | 40,000 | 38,500 |
| ERU Divisor | 2,406 | 2,406 | 2,406 | 2,406 |
| # of ERUs | 17 | 16 | 17 | 16 |
| Current ERU Rate | 92.60 | 92.60 | 92.60 | 92.60 |
| Assessment | 1,539 | 1,482 | 1,539 | 1,482 |
| Greater than Cap? | YES | NO | YES | NO |
| Exemption Amount | 1,539 | - | 39 | - |
| Amount To Be Paid | - | 1,482 | 1,500 | 1,482 |

In the example shown above, Non-Profit #1 under the Regulation would get a full exemption from the \$1,539 charge. Non-Profit #2, whose property has slightly less impervious area, would pay the full amount since its charge falls just below the cap. Under the Council staff recommendation, the two non-profits would pay a similar charge.

All assumptions being equal, the Council staff approach would also raise more revenue, and thus possibly offset the impact of reducing the cap percentage from .4% to .3%. However, at these margins, Council staff does not believe the hardship exemption recommended would have a major impact on the underlying base rates, since non-profits make up only about 5 percent of all ERU's under the new Charge.

Council staff Recommendation: Require each non-profit organization to pay the Charge up to a percentage of gross revenues. This approach is more equitable because all non-profits would pay the lower of the full charge or the cap amount, rather than those over the cap paying nothing and those under the cap paying the full Charge. In any case, the phase-in for non-residential properties would, of course, apply to properties of non-profit organizations.

The Archdiocese of Washington objects to both paying the full Charge and having to qualify for a hardship exemption. They would prefer a flat limit on the amount any non-profit organization would pay (see Archdiocese letter and memo, ©76-83). The state Attorney General's Office has informally concluded that this kind of limit would not conflict with either the state law or, if limited to religious organizations, the U. S. Constitution (see Attorney General letter, ©84-86). Our County Attorney and Council legal staff are not convinced that a flat limit of this sort would conform to the state law, and the legislature recently declined to pass a bill with that kind of provision.

10) Expedited Bill Since the state law requires the revised Charge to take effect no later than July 1,² **this Bill should be converted to an Expedited Bill.** This can be done by inserting the following subsection on ©9, line 206, replacing the first sentence, and relettering the later subsections:

²An amendment to delay the law's effective date did not pass in the 2013 state legislative session. See HB508.

- (a) The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on July 1, 2013.

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Bill No. 34-12
Concerning: Stormwater Management –
Water Quality Protection Charge
Revised: 3-14-13 Draft No. 3
Introduced: November 27, 2012
Expires: May 27, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) subject all properties not otherwise exempt under state law to the Water Quality Protection Charge;
- (2) allow certain property owners to obtain a credit equal to a certain percentage of the Charge;
- (3) exempt certain property owners that are able to demonstrate substantial financial hardship;
- (4) provide for a phase-in of certain increases to the Charge; and
- (5) generally amend County law regarding the Water Quality Protection Charge.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Sections 19-21, 19-28, 19-29, 19-35

By adding

Chapter 19, Erosion, Sediment Control and Storm Water Management
Section 19-29A

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 19-21, 19-28, 19-29 and 19-35 are amended, and Section 19-29A is added, as follows:

19-21. Definitions

* * *

[Associated nonresidential property: A nonresidential property from which stormwater drains into a stormwater management facility that primarily serves one or more residential properties.]

* * *

Impervious area or impervious surface: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, [deck,] sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment, regardless of surface type or material, including any road, [road shoulder,] driveway, or parking area.

* * *

Person: An individual;[, corporation, firm, partnership, joint venture, agency, organization, municipal corporation,] a legal entity; or a department, agency, or instrument of the County or, [state agency, or any combination of them] to the extent allowed by law, federal, state, or local government.

* * *

19-28. Inspection and maintenance of stormwater management systems.

* * *

(b) *Maintenance of new stormwater management systems.*

- (1) Before issuing a sediment control permit to develop any property that requires implementation of best management practices, the Department must require the property owner to

28 execute an easement and an inspection and maintenance
29 agreement that is binding on each later [owner[s]] owner of the
30 land to be served by any private stormwater management
31 system.

- 32 (2) The easement must give the County a perpetual right of access
33 to the stormwater management system at all reasonable times to
34 inspect, operate, monitor, install, construct, reconstruct, modify,
35 maintain, clean, or repair any part of the stormwater
36 management system [within] in the area covered by the
37 easement as needed to assure that the system remains in proper
38 working condition under approved design and environmental
39 standards. The inspection and maintenance agreement must
40 require the owner to be responsible for all maintenance of any
41 completed ESD treatment system and nonstructural
42 maintenance of any on-site stormwater management facility if
43 the development consists of residential property [[or
44 [associated] of nonresidential property that contains a
45 stormwater management facility built or retrofitted by the
46 County]]. Otherwise, the inspection and maintenance
47 agreement must require the owner to be responsible forever for
48 all maintenance of the entire on-site stormwater management
49 system, including maintaining in good condition, and promptly
50 repairing and restoring, each ESD practice, grade surface, wall,
51 drain, dam and structure, vegetation, erosion and sediment
52 control measure, and any other protective device [forever].

- 53 (3) The owner must record the easement and agreement in the
54 County land records and deliver a certified copy of each

recorded document to the Departments of Permitting Services and Environmental Protection before the Department may issue a completion certificate.

- (4) After the Department issues a completion certificate for construction of a new stormwater management facility, the County must perform all structural maintenance on the facility if the facility serves residential property ~~[[or [associated] is a facility built or retrofitted by the County that serves nonresidential property]]~~ unless the inspection and maintenance agreement requires the property owner to be responsible for structural maintenance of the facility. No other person may perform structural maintenance on a stormwater management facility that the County is required to structurally maintain without the County's written consent.
- (5) Any repair or restoration and maintenance performed under this Section must comply with each previously approved or newly submitted plan and any reasonable corrective measure specified by the Director of Environmental Protection.

(c) *Maintenance of existing or retrofitted stormwater management [facilities] systems.*

- (1) The owner of a stormwater management facility that is not subject to subsection (b) must perform all structural maintenance needed to keep the facility in proper working condition. The owner of a residential property or [associated] a nonresidential property that contains a stormwater management facility built or retrofitted by the County, or a homeowners' association that includes the residential property, may execute a

82 stormwater management easement granting the County a
83 perpetual right of access to inspect, operate, monitor, install,
84 construct, reconstruct, modify, maintain, clean, or repair any
85 part of the stormwater management facility [within] in the
86 easement as needed to assure that the facility remains in proper
87 working condition under approved design standards.

88 (2) If the owner of a stormwater management facility grants a
89 stormwater management easement to the County, the owner
90 must make any structural repairs needed to place the facility in
91 proper working condition, as determined by the Department of
92 Environmental Protection, before the County enters into an
93 inspection and maintenance agreement with the owner that
94 [obligates] makes the County [to assume responsibility]
95 responsible for structural maintenance of the facility. After the
96 owner and the County have agreed that the County will [assume
97 responsibility] be responsible for structural maintenance of the
98 facility, the owner must record in the County land records the
99 easement and any other agreement executed in conjunction with
100 the easement that binds any later owner of the land. The owner
101 must deliver a certified copy of each recorded document to the
102 Department of Environmental Protection.

103 (3) After the Department of Environmental Protection receives a
104 certified copy of the easement and agreements, the County must
105 structurally maintain and inspect the facility as provided in
106 subsection (b).

107 (4) If a property contains [[an ESD treatment]] a stormwater
108 management system that was installed or retrofitted by the

County under a sediment control permit, the inspection and maintenance agreement may require the County to maintain the system.

* * *

19-29. Stormwater management loan program.

(a) The Department of Environmental Protection must create a Stormwater Management Loan Program. The Program must provide direct loans to eligible homeowners' associations and other residential [and associated nonresidential] property owners to:

- (1) make structural repairs to restore a stormwater management facility to acceptable design standards before the owner petitions the County to assume responsibility for future structural maintenance of the facility under Section 19-28(d), or
- (2) cover the cost of abandoning a facility under Section 19-28(e).

* * *

19-29A. Watershed restoration grants program.

(a) The Director of Environmental Protection may establish a Watershed Restoration Grant Program. The purpose of the Program is to provide funds to non-profit organizations to perform water quality protection or improvement activities that would help the County satisfy applicable regulatory requirements of the County's National Pollutant Discharge Elimination Systems permit.

(b) To identify non-profit organizations to perform water quality protection or improvement activities, the Director of the Department of General Services may issue a competitive solicitation under Chapter 11B that is limited to non-profit organizations.

19-35. Water Quality Protection Charge.

[[* * *]]

- (a) As authorized by State law [[(Maryland Code, Environment Art., § 4-204)]]], the Director of Finance must annually impose and collect a Water Quality Protection Charge, as provided in this Section. The Director must collect the Charge in the same manner as County real property taxes, apply the same interest, penalties, and other remedies (including tax sale) if the Charge is not paid, and generally treat the Charge for collection and administration purposes as if it were a County real property tax. The Director may treat any unpaid Charge as a lien on the property to which the charge applies.
- (b) The Charge must be imposed on each [residential property and associated nonresidential] property, as specified in regulations adopted by the Executive under Method (1) to administer this Section. The regulations may define different classes of real property, depending on the amount of impervious surface on the property, stormwater runoff from the property, and other relevant characteristics, for purposes of applying the Charge.

* * *

- (e) [[The regulations may allow credits against and exemptions from the Charge:
- (1) to the extent that credits and exemptions are not prohibited by State law; and
 - (2) if each credit or exemption will enhance water quality or otherwise promote the purposes of this Article.]]
- (1) A property owner may [[request]] apply for, and the Director of Environmental Protection must grant, a credit equal to a percentage, set by regulation, of the Charge if the property

contains a stormwater management system that is not maintained by the County or if the owner participates in a County-approved water quality management practice or initiative. To receive the credit, the property owner must ~~[[submit a request]]~~ apply to the Director of Environmental Protection in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due. Any credit granted under this subsection is valid for 3 years.

(2) The owner of an owner-occupied residential property, or any non-profit organization, that ~~[[is able to]]~~ can demonstrate substantial financial hardship may ~~[[request]]~~ apply for an exemption from all or part of the Charge for that property, based on criteria set by regulation. The ~~[[owner-occupant]]~~ owner or organization may apply for the exemption ~~[[by submitting a written request]]~~ to the Director of Environmental Protection not later than April 1 of the year ~~[[before]]~~ when payment of the Charge is due.

(f) The Director must deposit funds raised by the Charge, and funds for this purpose from any other source, into a stormwater management fund. Funds in the stormwater management fund may be applied and pledged to pay debt service on debt obligations to finance the construction and related expenses of stormwater management facilities as approved in the Capital Improvements Program. Funds in the stormwater management fund must only be used for:

* * *

(3) any other activity authorized by this Article or ~~[[Maryland Code, Environment Art., § 4-204]]~~ state law.

(g) This Charge does not apply to any property located in a municipality in the County which~~[[;]]~~ notifies the County that it has imposed or intends to impose

~~[[~~(1) operates a stormwater management program that meets all applicable federal, State, and County requirements and has received any necessary federal or State permit; and

(2) imposes~~]]~~ a similar charge ~~[[or other means of funding]]~~ to fund its stormwater management program in that municipality.

* * *

(i) A person that believes that the Director of Environmental Protection has incorrectly denied the person's ~~[[request]]~~ application for a credit or exemption under subsection ~~[[b)]]~~ (e) may appeal the Director's decision to the County Board of Appeals within 10 days after the Director issues the decision.

* * *

Sec. 2. Implementation; effective date.

(a) This Act takes effect on July 1, 2013. Notwithstanding County Code Section 19-35(b), as amended by Section 1 of this Act, the Director of Finance must phase in the Water Quality Protection Charge as provided in this Section.

(b) The Director must phase in over ~~[[3]]~~ 5 years any increase in the Charge that results from the application of Section 19-35(b), as amended by Section 1 of this Act, or any regulation adopted under that Section, by including:

(1) only ~~[[one-third]]~~ 20% of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2013;

(2) only ~~[[two-thirds]]~~ 40% of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2014; ~~[[and]]~~

~~(3)~~ only 60% of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2015;

~~(4)~~ only 80% of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2016; and

~~[[3]]~~ (5) the full amount of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, [[2015]] 2017.

(c) The phase-in established in this Section does not apply to any portion of the Charge that results from the inclusion in the calculation of the Charge of any impervious surface area that is created after ~~[[this Act takes effect]]~~ June 30, 2013.

(d) To receive a credit or exemption under Section ~~[[19-35(b)]]~~ 19-35(e) for the fiscal year that begins on July 1, 2013, ~~[[the]]~~ a property owner must ~~[[submit a request]]~~ apply to the Director of Environmental Protection ~~[[on a form prescribed by the Director]]~~ not later than ~~[[July 31]]~~ September 30, 2013.

Approved:

Nancy Navarro, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 34-12

Stormwater Management – Water Quality Protection Charge

DESCRIPTION: Amends the law governing the Water Quality Protection Charge by requiring all property owners not otherwise exempt under state law to pay the Charge, allowing property owners to obtain credits for undertaking certain water quality protection measures on their properties, and authorizing financial hardship exemptions for certain owner-occupants of residential properties.

PROBLEM: County law does not currently authorize imposition of the WQPC on the owner of any nonresidential property unless a portion of that property's impervious area drains to a residential stormwater treatment facility. The existing law classifies these properties as associated nonresidential properties ("ANRs"). The County's inability to levy the Charge on nonresidential properties other than ANRs has resulted in a large number of properties whose impervious surfaces contribute to water quality impairments while their owners are effectively exempt from paying into the Water Quality Protection Fund despite benefiting from the County's watershed restoration and water quality remediation initiatives.

In 2010, the County received its third Municipal Separate Storm Sewer System ("MS4") Permit from the Maryland Department of the Environment. This permit, which is mandatory under the Federal Clean Water Act, requires the County to retrofit 4,300 impervious acres not currently treated to the maximum extent practicable. The intent of this Bill is to make the WQPC more equitable by spreading the cost of restoration over all properties contributing to the problem and whose owners benefit from the County's water quality protection programs.

The existing law provides credits specifically geared to property owners that have installed stormwater treatment facilities on their properties. The credits specified in the bill are intended to reduce the amount of the Charge paid by property owners whose actions have reduced stormwater runoff and thereby assisted the County's efforts to comply with its MS4 Permit.

Finally, state law enacted in 2012 mandates that County law exempt property owners who can demonstrate that paying the Charge would create a substantial financial hardship.

GOALS AND OBJECTIVES: To make the WQPC more equitable by spreading the cost of implementing the pollution control measures required under the County's MS4 Permit to all property owners not otherwise exempt under state law; create a systems of credits to encourage property owners to participate in certain water quality management practices; and bring County law into compliance with state law as it pertains to locally levied charges to pay for stormwater remediation.

COORDINATION: Department of Environmental Protection, Department of Finance

FISCAL IMPACT: See Fiscal and Economic Impact Statement

ECONOMIC IMPACT: See Fiscal and Economic Impact Statement

| | |
|---|--|
| EVALUATION: | To be determined. |
| EXPERIENCE ELSEWHERE: | All the stormwater utilities run by other jurisdictions surveyed throughout the County charge nonresidential properties. |
| SOURCE OF INFORMATION: | Steven Shofar, Division Chief, Watershed Management Division, Department of Environmental Protection (7-7736) |
| APPLICATION WITHIN MUNICIPALITIES: | Does not apply in Rockville and Takoma Park. The County collects the Charge for Gaithersburg and provides the funds to the city minus an administrative fee. |
| PENALTIES: | Class A |




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 25, 2012

TO: Roger Berliner
County Council President

FROM: Isiah Leggett 
County Executive

SUBJECT: Proposed Legislation: Stormwater Management - Water Quality Protection Charge

I am transmitting for Council introduction a bill to amend current law governing the Water Quality Protection Charge (WQPC or Charge). The attached package includes the bill, draft regulations to implement the bill which will be published in the November 2012 County Register, Legislative Request Report, Fiscal Impact Statement, and Economic Impact Statement. Key issues related to the development of this legislative package are detailed below.

The WQPC, which was first authorized in 2002, is an excise tax levied against all residential property owners and a limited number of non-residential property owners. Currently, single-family residential properties are assessed the same amount, irrespective of size; townhomes are assessed one third of the single family Charge. Non-residential properties are assessed the Charge only to the extent their property drains to a residential stormwater management facility.

The WQPC is used primarily to fund the County's stormwater facility maintenance and inspection program and the activities necessary to meet the requirements in the Maryland Municipal Separate Storm Sewer System (MS4) permit. These activities include stream restoration projects, stormwater pond retrofits, stream monitoring, Low Impact Development techniques, outreach and education, and others.

At the end of the 2012 legislation session, the General Assembly passed House Bill 987 - Stormwater Management – Watershed Protection and Restoration Program, which requires certain jurisdictions, including Montgomery County, to adopt stormwater utility fees. The new State law specifically identifies elements that must be included in the stormwater utility fee program. The County Attorney has determined that the following key elements of the new State law must be reflected in the County's stormwater management programs funded by the WQPC:

- 1) All properties, including all non-residential properties, must be assessed the Charge (whereas currently, the only non-residential properties that are covered under the WQPC are those draining to a residential stormwater facility).

- 2) There must be a credit program providing a reduced charge to property owners with stormwater systems on their properties (whereas currently there is no credit program).
- 3) There must be a hardship exemption for property owners able to demonstrate substantial financial hardship (whereas currently there is no hardship exemption).
- 4) The amount of the Charge must be based on the share of stormwater management services related to the property (whereas currently all single family residential property owners pay the same amount). In general, the share of the stormwater management services utilized is a function of the amount of impervious surface on the property.

To comply with the new State law, the County must amend the WQPC law and the Executive Regulations that implement that law. All but the fourth item listed above require changes to the WQPC law. The fourth item requires changes to Executive Regulations.

Specifically, the attached bill amends the WQPC law to:

- 1) Expand the types of property that are subject to the Charge to include all non-residential properties.
- 2) Establish a 3-year phase-in for any increase in the Charge that is due to application of the bill or any regulations adopted under the bill.
- 3) Authorize the County to provide credits to property owners that have stormwater management systems on their properties.
- 4) Establish a hardship exemption for residential property owners who can demonstrate substantial financial hardship.
- 5) Authorize the County to perform maintenance on non-residential property when the County installs a retrofit on that property.

The draft companion Executive Regulations that are attached to this memorandum establish:

- 1) A 7-tier system for assessing the WQPC on residential properties based on the amount of impervious surface. The tiered system is designed to comply with the new State law requirement that the Charge must be based on the share of stormwater management services related to the residential property.
- 2) A credit program for eligible property owners with on-site stormwater treatment facilities. A property owner's eligibility is based on the type of stormwater management practice and level of treatment that the facility provides. The maximum credit for non-residential property owners is 50 percent of the assessed charge for traditional stormwater treatment facilities and 60 percent if the entire impervious area is treated using environmental site design. There is also a 50 percent maximum credit for residential property owners with stormwater treatment.
- 3) A hardship exemption for residential property owners whose income is below 100% of the Federal poverty level.

The impact of all these changes to both the County Code and related regulations is set forth in the attached Economic Impact Statement and Fiscal Impact Statement, but to summarize:

- 1) Non-residential property owners will now be charged for the entire impervious surface on their property, not just for the impervious surface that drains to a residential stormwater facility (as is currently the case). The Charge will be assessed based on the square footage of imperviousness, so the more impervious surface, the greater the Charge. Since there will be a significant increase in the Charge for some non-residential property owners, a three-year phase-in is being proposed for any increase in the Charge caused by additional square footage of imperviousness being included in the calculation of the Charge. Additionally, the credit program is available to reduce the Charge for properties with stormwater management systems meeting the proposed criteria.
- 2) Residential property owners will now receive a Charge that is based on the amount of impervious surface on their property through a 7-tier system. Under current law, the estimated Charge for all single family residential property owners for FY14 would be \$98. Under the proposed bill and regulations, the FY14 Charge would vary depending on the amount of imperviousness on the property, as set forth below:
 - 1.\$33.76, for Tier 1 (1,000 sq ft or less)
 - 2.\$51.15, for Tier 2 (1,001 – 1,410 sq ft)
 - 3.\$102.30, for Tier 3 (1,411 – 3,412sq ft)
 - 4.\$119.69, for Tier 4 (3,413 – 3,810 sq ft)
 - 5.\$136.06, for Tier 5 (3,811 – 5,815 sq ft)
 - 6.\$153.45, for Tier 6 (5,816 – 6,215 sq ft)
 - 7.\$170.84 for Tier 7 (6,216 sq ft and greater)

For residential properties that are subject to an increased Charge under the new 7-tier system, the increase will be phased-in over three years. Also, the Charge could be reduced if properties qualify for credits.

- 1) There are administrative and programmatic expenditures associated with implementing the proposed changes to the WQPC law and companion draft Executive Regulations. Expenditures resulting from the Bill include: contractual geographic information system (GIS) personnel for impervious area data processing; one full-time Planning Specialist III to administer the new credit and hardship exemption programs; and facility maintenance and inspection costs on County installed or retrofitted stormwater facilities on non-residential property. The estimated annual expenditure to implement the proposed legislation and rate structure changes included in the draft Executive Regulation is \$184,860. These costs will be covered by the revenue collected through the proposed fees.

Roger Berliner
October 25, 2012
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As the Council works through this legislation and the companion regulations, Executive Staff is available to provide any information and assistance you may require.

Attachments (5)

- c. Bob Hoyt, Director, Department of Environmental Protection
Joe Beach, Director, Finance Department
Kathleen Boucher, Assistant Chief Administrative Officer
Marc Hansen, County Attorney
Jennifer Hughes, Director, Office of Management and Budget

Chapter 151

(House Bill 987)

AN ACT concerning

Stormwater Management – Watershed Protection and Restoration Program

FOR the purpose of requiring ~~each a county and or~~ municipality subject to a certain municipal stormwater permit to adopt and implement certain laws or ordinances to establish a watershed protection and restoration program on or before a certain date; exempting a certain county or municipality from the requirements of this Act if the county or municipality has enacted and implemented a certain system of charges in a certain manner by a certain date; requiring a watershed protection and restoration program to include a stormwater remediation fee and a local watershed protection and restoration fund; requiring ~~each a county and or~~ municipality to maintain ~~and or~~ administer a local watershed protection and restoration fund in accordance with this Act; establishing the purpose of a local watershed protection and restoration fund; requiring ~~each a county and or~~ municipality to establish and collect a stormwater remediation fee in accordance with this Act; requiring ~~each a county and or~~ municipality to set the amount of a ~~residential~~ stormwater remediation fee in a certain manner; authorizing a county or municipality to use certain calculation methods to set a stormwater remediation fee; ~~requiring each a county and or municipality to set the amount of a nonresidential stormwater remediation fee in a certain manner~~; providing that a stormwater remediation fee is separate from certain other charges; exempting certain property from paying the stormwater remediation fee; ~~authorizing~~ requiring a county or municipality to establish policies and procedures approved by the Department of the Environment to reduce a certain stormwater remediation fee ~~in accordance with certain policies and procedures~~ for a certain purpose; requiring the policies and procedures to include certain items; authorizing a county or municipality to monitor and verify the effectiveness of certain measures in a certain manner; prohibiting, ~~with certain exception, a county from imposing a stormwater remediation fee on a property located within a municipality~~; ~~authorizing a municipality to authorize a county to impose a stormwater remediation fee on a property located within a municipality in place of a municipal stormwater remediation fee~~; the assessment of a stormwater remediation fee on a property by both a county and a municipality; requiring a county to provide certain notice and a reasonable time to pass a certain ordinance before the county may impose a stormwater remediation fee on property located within a municipality; requiring a municipality to provide certain notice and a reasonable time for a county to discontinue collecting a certain stormwater remediation fee under certain circumstances; requiring ~~each a county and or~~ municipality to establish a procedure for a property owner to appeal the imposition of a stormwater

remediation fee; requiring ~~each~~ a county ~~and~~ or municipality to determine the method, frequency, and enforcement of the collection of the stormwater remediation fee and to deposit the fee into a local watershed protection and restoration fund; specifying the money to be deposited in a local watershed protection and restoration fund and the uses of the money in the fund; providing that money in a local watershed and restoration fund may not revert or be transferred to the general fund of any county or municipality; requiring each county and municipality to make publicly available a report on certain information; requiring a county or municipality to establish a certain hardship program; authorizing the Department of the Environment to adopt certain regulations; defining a certain term; and generally relating to stormwater management in the State.

BY repealing and reenacting, with amendments,

Article – Environment

Section 4–201.1

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

BY adding to

Article – Environment

Section 4–202.1

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

4–201.1.

(a) In this subtitle the following words have the meanings indicated.

(b) “Environmental site design” means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

(c) “Environmental site design” includes:

(1) Optimizing conservation of natural features, such as drainage patterns, soils, and vegetation;

(2) Minimizing use of impervious surfaces[, such as paved surfaces, concrete channels, roofs, and pipes];

(3) Slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration; and

(4) Using other nonstructural practices or innovative stormwater management technologies approved by the Department.

(D) (1) "IMPERVIOUS SURFACE" MEANS A SURFACE THAT DOES NOT ALLOW STORMWATER TO INFILTRATE INTO THE GROUND.

(2) "IMPERVIOUS SURFACE" INCLUDES ROOFTOPS, DRIVEWAYS, SIDEWALKS, OR PAVEMENT.

4-202.1.

~~(A) ON OR BEFORE JULY 1, 2013, A COUNTY OR MUNICIPALITY SHALL ADOPT AND IMPLEMENT LOCAL LAWS OR ORDINANCES NECESSARY TO ESTABLISH A WATERSHED PROTECTION AND RESTORATION PROGRAM.~~

~~(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SECTION APPLIES TO A COUNTY OR MUNICIPALITY THAT IS SUBJECT TO A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT.~~

(2) THIS SECTION DOES NOT APPLY TO A COUNTY OR MUNICIPALITY THAT, ON OR BEFORE JULY 1, 2012, HAS ENACTED AND IMPLEMENTED A SYSTEM OF CHARGES UNDER § 4-204 OF THIS SUBTITLE FOR THE PURPOSE OF FUNDING A WATERSHED PROTECTION AND RESTORATION PROGRAM, OR SIMILAR PROGRAM, IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

~~(B) ON OR BEFORE JULY 1, 2013, A COUNTY OR MUNICIPALITY SHALL ADOPT AND IMPLEMENT LOCAL LAWS OR ORDINANCES NECESSARY TO ESTABLISH A WATERSHED PROTECTION AND RESTORATION PROGRAM.~~

(C) A WATERSHED PROTECTION AND RESTORATION PROGRAM ESTABLISHED UNDER THIS SECTION SHALL INCLUDE:

(1) A STORMWATER REMEDIATION FEE; AND

(2) A LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(D) (1) ~~EACH A COUNTY AND OR~~ MUNICIPALITY SHALL MAINTAIN ~~AND OR~~ ADMINISTER A LOCAL WATERSHED PROTECTION AND RESTORATION FUND IN ACCORDANCE WITH THIS SECTION.

(2) THE PURPOSE OF A LOCAL WATERSHED PROTECTION AND RESTORATION FUND IS TO PROVIDE FINANCIAL ASSISTANCE FOR THE IMPLEMENTATION OF LOCAL STORMWATER MANAGEMENT PLANS THROUGH STORMWATER MANAGEMENT PRACTICES AND STREAM AND WETLAND RESTORATION ACTIVITIES.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND SUBSECTION (F) OF THIS SECTION, ~~EACH A COUNTY AND OR~~ MUNICIPALITY SHALL ESTABLISH AND ANNUALLY COLLECT A STORMWATER REMEDIATION FEE FROM ~~PROPERTY OWNERS~~ OF PROPERTY LOCATED WITHIN THE COUNTY OR MUNICIPALITY IN ACCORDANCE WITH THIS SECTION.

(2) PROPERTY OWNED BY THE STATE, A UNIT OF STATE GOVERNMENT, A COUNTY, A MUNICIPALITY, OR A REGULARLY ORGANIZED VOLUNTEER FIRE DEPARTMENT THAT IS USED FOR PUBLIC PURPOSES MAY NOT BE CHARGED A STORMWATER REMEDIATION FEE UNDER THIS SECTION.

(3) (I) ~~EACH A COUNTY AND OR~~ MUNICIPALITY SHALL SET A ~~RESIDENTIAL~~ STORMWATER REMEDIATION FEE FOR PROPERTY IN AN AMOUNT THAT IS BASED ON THE SHARE OF STORMWATER MANAGEMENT SERVICES RELATED TO THE PROPERTY AND PROVIDED BY THE COUNTY OR MUNICIPALITY.

~~(II) A COUNTY OR MUNICIPALITY MAY SET A STORMWATER REMEDIATION FEE UNDER THIS PARAGRAPH IN AN AMOUNT THAT IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH PROPERTY.~~

(II) A COUNTY OR MUNICIPALITY MAY SET A STORMWATER REMEDIATION FEE UNDER THIS PARAGRAPH BASED ON:

1. A FLAT RATE;
2. AN AMOUNT THAT IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH PROPERTY; OR
3. ANOTHER METHOD OF CALCULATION SELECTED BY THE COUNTY OR MUNICIPALITY.

~~(I) IS THE SAME FOR ALL RESIDENTIAL PROPERTY OWNERS WITHIN THE COUNTY OR MUNICIPALITY;~~

~~(II) VARIES BASED ON THE TYPE OF RESIDENTIAL PROPERTY, INCLUDING SINGLE FAMILY OR MULTIPLE OCCUPANCY PROPERTIES; OR~~

~~(III) IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH RESIDENTIAL PROPERTY.~~

~~(3) EACH A COUNTY AND OR MUNICIPALITY SHALL SET A NONRESIDENTIAL STORMWATER REMEDIATION FEE IN AN AMOUNT THAT:~~

~~(I) IS GREATER THAN OR EQUAL TO THE RESIDENTIAL STORMWATER REMEDIATION FEE SET UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND~~

~~(II) CONSISTS OF:~~

~~1. A BASE AMOUNT THAT IS THE SAME FOR ALL NONRESIDENTIAL PROPERTY OWNERS WITHIN THE COUNTY OR MUNICIPALITY; AND~~

~~2. AN AMOUNT THAT IS GRADUATED BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH NONRESIDENTIAL PROPERTY.~~

~~(4) (2) (4)~~ A STORMWATER REMEDIATION FEE ESTABLISHED UNDER THIS SECTION IS SEPARATE FROM ANY CHARGES THAT A COUNTY OR MUNICIPALITY ESTABLISHES RELATED TO STORMWATER MANAGEMENT FOR NEW DEVELOPMENTS UNDER § 4-204 OF THIS SUBTITLE, INCLUDING FEES FOR PERMITTING, REVIEW OF STORMWATER MANAGEMENT PLANS, INSPECTIONS, OR MONITORING.

(F) (1) ~~IN ACCORDANCE WITH A COUNTY OR MUNICIPALITY MAY~~ SHALL ESTABLISH POLICIES AND PROCEDURES ~~ESTABLISHED BY A COUNTY OR MUNICIPALITY AND,~~ APPROVED BY THE DEPARTMENT, ~~A COUNTY OR MUNICIPALITY MAY TO~~ REDUCE ANY PORTION OF A STORMWATER REMEDIATION FEE ESTABLISHED UNDER SUBSECTION (E) OF THIS SECTION ~~THAT IS BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON A PROPERTY TO~~ ACCOUNT FOR ON-SITE AND OFF-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES THAT REDUCE THE QUANTITY OR IMPROVE THE QUALITY OF STORMWATER DISCHARGED FROM THE PROPERTY.

(2) THE POLICIES AND PROCEDURES ESTABLISHED BY A COUNTY OR MUNICIPALITY UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

(I) GUIDELINES FOR DETERMINING WHICH ON-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES MAY BE THE BASIS FOR A FEE REDUCTION, INCLUDING GUIDELINES:

1. RELATING TO PROPERTIES WITH EXISTING ADVANCED STORMWATER BEST MANAGEMENT PRACTICES;

2. RELATING TO AGRICULTURAL ACTIVITIES OR FACILITIES THAT ARE OTHERWISE EXEMPTED FROM STORMWATER MANAGEMENT REQUIREMENTS BY THE COUNTY OR MUNICIPALITY; AND

3. THAT ACCOUNT FOR THE COSTS OF, AND THE LEVEL OF TREATMENT PROVIDED BY, STORMWATER MANAGEMENT FACILITIES THAT ARE FUNDED AND MAINTAINED BY A PROPERTY OWNER;

(II) THE METHOD FOR CALCULATING THE AMOUNT OF A FEE REDUCTION; AND

(III) PROCEDURES FOR MONITORING AND ~~ANNUALLY~~ VERIFYING THE EFFECTIVENESS OF THE ON-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES IN REDUCING THE QUANTITY OR IMPROVING THE QUALITY OF STORMWATER DISCHARGED FROM THE PROPERTY.

(3) FOR THE PURPOSE OF MONITORING AND VERIFYING THE EFFECTIVENESS OF ON-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION, A COUNTY OR MUNICIPALITY MAY:

(I) CONDUCT ON-SITE INSPECTIONS;

(II) AUTHORIZE A THIRD PARTY, CERTIFIED BY THE DEPARTMENT, TO CONDUCT ON-SITE INSPECTIONS ON BEHALF OF THE COUNTY OR MUNICIPALITY; OR

(III) REQUIRE A PROPERTY OWNER TO HIRE A THIRD PARTY, CERTIFIED BY THE DEPARTMENT, TO CONDUCT AN ON-SITE INSPECTION AND PROVIDE TO THE COUNTY OR MUNICIPALITY THE RESULTS OF THE INSPECTION AND ANY OTHER INFORMATION REQUIRED BY THE COUNTY OR MUNICIPALITY.

(G) (1) A PROPERTY MAY NOT BE ASSESSED A STORMWATER REMEDIATION FEE BY BOTH A COUNTY AND A MUNICIPALITY.

~~(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A COUNTY MAY NOT IMPOSE A COUNTY STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN A MUNICIPALITY.~~

~~(II) A MUNICIPALITY MAY AUTHORIZE A COUNTY TO IMPOSE A COUNTY STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN THE MUNICIPALITY IN PLACE OF A MUNICIPAL STORMWATER REMEDIATION FEE.~~

(2) (I) BEFORE A COUNTY MAY IMPOSE A STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN A MUNICIPALITY, THE COUNTY SHALL:

1. NOTIFY THE MUNICIPALITY OF THE COUNTY'S INTENT TO IMPOSE A STORMWATER REMEDIATION FEE ON PROPERTY LOCATED WITHIN THE MUNICIPALITY; AND

2. PROVIDE THE MUNICIPALITY REASONABLE TIME TO PASS AN ORDINANCE AUTHORIZING THE IMPOSITION OF A MUNICIPAL STORMWATER REMEDIATION FEE INSTEAD OF A COUNTY STORMWATER REMEDIATION FEE.

(II) IF A COUNTY CURRENTLY IMPOSES A STORMWATER REMEDIATION FEE ON PROPERTY LOCATED WITHIN A MUNICIPALITY AND THE MUNICIPALITY DECIDES TO IMPLEMENT ITS OWN STORMWATER REMEDIATION FEE UNDER THIS SECTION OR § 4-204 OF THIS SUBTITLE, THE MUNICIPALITY SHALL:

1. NOTIFY THE COUNTY OF THE MUNICIPALITY'S INTENT TO IMPOSE ITS OWN STORMWATER REMEDIATION FEE; AND

2. PROVIDE THE COUNTY REASONABLE TIME TO DISCONTINUE THE COLLECTION OF THE COUNTY STORMWATER REMEDIATION FEE WITHIN THE MUNICIPALITY BEFORE THE MUNICIPALITY'S STORMWATER REMEDIATION FEE BECOMES EFFECTIVE.

(3) ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL ESTABLISH A PROCEDURE FOR A PROPERTY OWNER TO APPEAL A STORMWATER REMEDIATION FEE IMPOSED UNDER THIS SECTION.

(H) (1) ~~EACH A~~ COUNTY ~~AND OR~~ MUNICIPALITY SHALL DETERMINE THE METHOD, FREQUENCY, AND ENFORCEMENT OF THE COLLECTION OF THE STORMWATER REMEDIATION FEE.

(2) ~~EACH A~~ COUNTY ~~AND OR~~ MUNICIPALITY SHALL DEPOSIT THE STORMWATER REMEDIATION FEES IT COLLECTS INTO ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(3) THERE SHALL BE DEPOSITED IN A LOCAL WATERSHED PROTECTION AND RESTORATION FUND:

(I) FUNDS RECEIVED FROM THE STORMWATER REMEDIATION FEE;

(II) INTEREST OR OTHER INCOME EARNED ON THE INVESTMENT OF MONEY IN THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND; AND

(III) ANY ADDITIONAL MONEY MADE AVAILABLE FROM ANY SOURCES FOR THE PURPOSES FOR WHICH THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND HAS BEEN ESTABLISHED.

(4) ~~EACH A~~ SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, A COUNTY ~~AND OR~~ MUNICIPALITY SHALL USE THE MONEY IN ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND FOR THE FOLLOWING PURPOSES ONLY:

(I) CAPITAL IMPROVEMENTS FOR STORMWATER MANAGEMENT, INCLUDING STREAM AND WETLAND RESTORATION PROJECTS;

(II) OPERATION AND MAINTENANCE OF STORMWATER MANAGEMENT SYSTEMS AND FACILITIES;

(III) PUBLIC EDUCATION AND OUTREACH RELATING TO STORMWATER MANAGEMENT OR STREAM AND WETLAND RESTORATION;

(IV) STORMWATER MANAGEMENT PLANNING, INCLUDING:

1. MAPPING AND ASSESSMENT OF IMPERVIOUS SURFACES; AND

2. MONITORING, INSPECTION, AND ENFORCEMENT ACTIVITIES TO CARRY OUT THE PURPOSES OF THE WATERSHED PROTECTION AND RESTORATION FUND;

(V) TO THE EXTENT THAT FEES IMPOSED UNDER § 4-204 OF THIS SUBTITLE ARE DEPOSITED INTO THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND, REVIEW OF STORMWATER MANAGEMENT PLANS AND PERMIT APPLICATIONS FOR NEW DEVELOPMENT;

(VI) GRANTS TO NONPROFIT ORGANIZATIONS FOR UP TO 100% OF A PROJECT'S COSTS FOR WATERSHED RESTORATION AND REHABILITATION PROJECTS RELATING TO:

1. PLANNING, DESIGN, AND CONSTRUCTION OF STORMWATER MANAGEMENT PRACTICES;

2. STREAM AND WETLAND RESTORATION; AND

3. PUBLIC EDUCATION AND OUTREACH RELATED TO STORMWATER MANAGEMENT OR STREAM AND WETLAND RESTORATION; AND

(VII) REASONABLE COSTS NECESSARY TO ADMINISTER THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(5) A COUNTY OR MUNICIPALITY MAY USE ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND AS AN ENVIRONMENTAL FUND, AND MAY DEPOSIT TO AND EXPEND FROM THE FUND ADDITIONAL MONEY MADE AVAILABLE FROM OTHER SOURCES AND DEDICATED TO ENVIRONMENTAL USES, PROVIDED THAT THE FUNDS RECEIVED FROM THE STORMWATER REMEDIATION FEE ARE EXPENDED ONLY FOR THE PURPOSES AUTHORIZED UNDER PARAGRAPH (4) OF THIS SUBSECTION.

~~(5)~~ (6) THE FUNDS DISBURSED UNDER THIS SUBSECTION ARE INTENDED TO BE IN ADDITION TO ANY EXISTING STATE OR LOCAL EXPENDITURES FOR STORMWATER MANAGEMENT.

~~(6)~~ (7) MONEY IN A LOCAL WATERSHED PROTECTION AND RESTORATION FUND MAY NOT REVERT OR BE TRANSFERRED TO THE GENERAL FUND OF ANY COUNTY OR MUNICIPALITY.

(I) BEGINNING JULY 1, 2014, AND EVERY 2 YEARS THEREAFTER, A COUNTY OR MUNICIPALITY SHALL MAKE PUBLICLY AVAILABLE A REPORT ON:

(1) THE NUMBER OF PROPERTIES SUBJECT TO A STORMWATER REMEDIATION FEE;

(2) THE AMOUNT OF MONEY DEPOSITED INTO THE WATERSHED PROTECTION AND RESTORATION FUND OVER THE PREVIOUS 2 FISCAL YEARS; AND

(3) THE PERCENTAGE OF FUNDS IN THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND SPENT ON EACH OF THE PURPOSES PROVIDED IN SUBSECTION (H)(4) OF THIS SECTION.

(J) (1) A COUNTY OR MUNICIPALITY SHALL ESTABLISH A PROGRAM TO EXEMPT FROM THE REQUIREMENTS OF THIS SECTION A PROPERTY ABLE TO DEMONSTRATE SUBSTANTIAL FINANCIAL HARDSHIP AS A RESULT OF THE STORMWATER REMEDIATION FEE.

(2) A COUNTY OR MUNICIPALITY MAY ESTABLISH A SEPARATE HARDSHIP EXEMPTION PROGRAM OR INCLUDE A HARDSHIP EXEMPTION AS PART OF A SYSTEM OF OFFSETS ESTABLISHED UNDER SUBSECTION (F)(1) OF THIS SECTION.

~~(J)~~ (K) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT AND ENFORCE THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Fiscal Impact Statement
Council Bill XX-12, Stormwater Management – Water Quality Protection Charge

1. Legislative Summary

This Bill applies to all non-residential properties and all residential properties in the County for purposes of stormwater management. The Bill would:

- a. Extend the Water Quality Protection Charge (WQPC or Charge) to include non-residential properties, which currently are covered only if they fall under the definition of an Associated Non-Residential Property (ANR)¹;
- b. Extend the WQPC for an ANR to include the remainder of the ANR's impervious area not currently charged;
- c. Phase in over three fiscal years any increase in the Charge to non-residential properties resulting from the expanded scope of the WQPC as described in a and b above (i.e. any impervious surface not currently draining to a residential pond);
- d. Phase in over three fiscal years any increase in the Charge to residential properties resulting from the modification of the Equivalent Residential Unit (ERU) system; Establish a credit program that would reduce the Charge to residential and non-residential properties having a County approved stormwater management system;
- e. Provide an exemption for residential property owners who are able to demonstrate substantial financial hardship; and,
- f. Authorize the County to perform maintenance on County installed or retrofitted facilities on non-residential properties.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There are administrative and programmatic expenditures associated with implementing the proposed changes to the WQPC law and companion draft Executive Regulations, which would be covered by the proposed WQPC rate. Expenditures resulting from the Bill include: contractual geographic information system (GIS) personnel for impervious area data processing; one full-time Planning Specialist III to administer the new credit and hardship exemption programs; and facility maintenance and inspection costs on County installed or retrofitted stormwater facilities on non-residential property.

Contractual GIS personnel are needed to supplement DEP resources to keep impervious surface layer and associated data updated and accurate. The Contractual GIS personnel will cost an estimated \$45,760 annually. This estimate assumes a rate of \$22 per hour and 2,080 work hours for the one contractor.

¹ An Associate Non-Residential property (ANR) is a non-residential property that drains to a stormwater facility that primarily serves residential properties. ANRs are charged based on only the amount of impervious surface that drains to the residential stormwater facility.

The one new Planning Specialist position will coordinate the administration of the credit and hardship exemption programs, which is authorized in the proposed bill. The annual cost estimate of \$89,100 assumes a mid-point grade 23 Planning Specialist III position (salary of \$68,531 plus 30 percent for employee benefits). Specific responsibilities for this position include outreach and education, working with property owners to complete applications, reviewing applications and engineering drawings, managing the database, review applications and verify income qualifications.

The credit program itself has no fiscal impact but will reduce the rates for participating property owners. The WQPC rate will need to generate the offsetting revenue to implement the program as well as support the full-time Planning Specialist III needed to administer the program.

The proposed legislation also provides the County with the authority to perform maintenance on County installed or retrofitted facilities located on non-residential property. The additional costs to the maintenance and inspection program are estimated to be less than \$50,000 annually. The exact costs will be determined on an annual basis and will be subject to budgetary appropriation covered by the WQPC.

The financial hardship exemption, which is mandated under a recent amendment to the state's stormwater management law (*see* Md. Code Ann., Envir. § 4-202.1 (j)), is included in the proposed legislation. Although the hardship exemption does not have a fiscal impact, it will impact the WQPC rate, as it will require offsetting revenue to implement.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The estimated first year expenditure to implement the proposed legislation and rate structure changes included in the draft Executive Regulation is \$184,860. The estimated annual recurring costs are \$184,860. Six-year costs would total \$1,109,160.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

As noted in number two above, the proposed legislation authorizes the County to perform maintenance on County installed or retrofitted facilities on non-residential property. This may lead to additional maintenance costs of no more than \$50,000 annually.

6. An estimate of the staff time needed to implement the bill.

DEP will be utilizing existing resources to implement the proposed rate structure changes effective FY14. Approximately one FTE will be devoted to this effort during the current year.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

There is no effect on other duties assuming additional staffing is provided to administer the credit system as authorized in the proposed legislation.

8. An estimate of costs when an additional appropriation is needed.

See number three above.

9. A description of any variable that could affect revenue and cost estimates.

Variables that could affect the cost estimate include the amount of work needed to provide maintenance to County installed or retrofitted facilities on non-residential property (as authorized under the proposed legislation), as well as the administration of the credit and hardship exemption programs.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

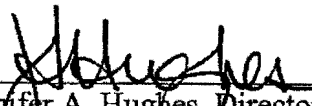
Not applicable.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Gladys Balderrama, Department of Environmental Protection
Vicky Wan, Department of Environmental Protection
Steven Shofar, Department of Environmental Protection
Matt Schaeffer, Office of Management and Budget
Amy Wilson, Office of Management and Budget
Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

10/9/12
Date

Economic Impact Statement
Council Bill xx-12, Stormwater Management – Water Quality Protection Charge

Background:

This Bill applies to all non-residential properties and all residential properties in the County for purposes of stormwater management. The Bill would:

- a. Extend the Water Quality Protection Charge (WQPC or Charge) to include non-residential properties, which currently are covered only if they fall under the definition of an associated non-residential property (ANR)¹;
- b. Extend the WQPC for an ANR to include the remainder of the ANR's impervious area not currently charged;
- c. Phase in over three fiscal years any increase in the Charge to non-residential properties resulting from the expanded scope of the WQPC as described in a and b above (i.e. any impervious surface not currently draining to a residential pond);
- d. Phase in over three fiscal years any increase in the Charge to residential properties resulting from the modification of the ERU system;
- e. Establish a credit program that would reduce the Charge to residential and non-residential properties having a County approved stormwater management system; and
- f. Provide an exemption for residential property owners who are able to demonstrate substantial financial hardship.

This economic impact statement (EIS) provides illustrative examples. The rates used in this EIS are preliminary and may be updated to reflect detailed data that are currently being developed by the Department of Environmental Protection (DEP). The economic impact is determined by comparing the estimated amount that a property owner would owe under the current WQPC to the estimated amount that the same property owner would owe under the proposed WQPC as set forth in the Bill.

1. The sources of information, assumptions, and methodologies used.

The analysis employs a case study approach that analyzes an averaged-sized non-residential property as an example of the economic impact for items a and b. A case study was used because of the variability in the number and characteristics of non-residential properties that currently pay the WQPC. The Department of Finance incorporated both the data and analysis undertaken by DEP to provide an example of the economic impact of Bill XX-12.

2. A description of any variable that could affect economic impact statements.

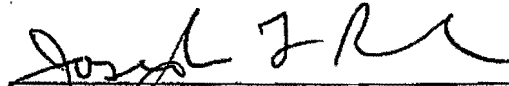
There are a number of variables that could affect the economic impact for each non-residential and single-family residential property. The variables include the amount of impervious surface on the property, the amount of the credit, and the proposed rate.

4. A single-family residential property with 4,000 square feet of impervious surface, would pay in FY14:
 - a. \$98 or 1 ERU² under existing law.
 - b. The property owner would have paid \$153.45 under the proposed law², but because of the three year phase-in of imperviousness, the Charge for the first year would be \$119.69.
5. A property with 2,000 square feet of impervious surface, which is owned and occupied by an owner who has an annual income equal to or less than 100% of the poverty guidelines would pay in FY14:
 - a. \$98.00 under existing law
 - b. Nothing under the proposed law since this person would qualify for an exemption.

4. If a bill is likely to have no economic impact, why is that the case?

The Bill does have an economic impact for both non-residential and single-family residential properties as presented in section 3.

5. The following contributed to and concurred with this analysis: Bob Hoyt, Steve Shofar and Vicky Wan, DEP; David Platt and Mike Coveyou, Finance.



Joseph F. Beach, Director
Department of Finance

9-27-12
Date

¹ An Associated Non-Residential property (ANR) is a non-residential property that drains to a stormwater facility that primarily serves residential properties. ANRs are charged based on only the amount of impervious surface that drains to the residential stormwater facility.

² A tiered approach is being proposed through the companion draft Executive Regulations, and satisfies the state law requirement to base the Charge on "...the share of the stormwater management services related to the property and provided by the county..." [see Md. Code Ann., Envir. § 4-202.1(e)(3)(i) (2012)] The tiered approach reduces the amount paid for residential properties that fall into lower tiers because they have less imperviousness than one ERU, and increases it for those that fall into higher tiers because they have greater imperviousness. A residential property that would have paid \$98 under the existing law would pay the following under the proposed law. The amounts below could be reduced, however, if it qualified for credits.

- a. \$33.76, for Tier 1 (1,000 sq ft or less)
- b. \$51.15, for Tier 2 (1,001 – 1,410 sq ft)
- c. \$102.30, for Tier 3 (1,411 – 3,412 sq ft)
- d. \$119.69, for Tier 4 (3,413 – 3,810 sq ft)
- e. \$136.06, for Tier 5 (3,811 – 5,815 sq ft)
- f. \$153.45, for Tier 6 (5,816 – 6,215 sq ft)
- g. \$170.84 for Tier 7 (6,216 sq ft and greater)

**Testimony of Bob Hoyt, Director,
Department of Environmental Protection
on behalf of County Executive Isiah Leggett**

Bill 34-12 – Stormwater Management - Water Quality Protection Charge

January 15, 2013

Good afternoon. My name is Bob Hoyt. I am the Director of the Department of Environmental Protection. Thank you for the opportunity to testify on behalf of the County Executive in support of Bill 34-12, which amends the County's existing Water Quality Protection Charge program to meet the requirements of a new State Law (HB 987 - Stormwater Management –Watershed Protection and Restoration Program (2012)).

This new State law requires certain jurisdictions, including Montgomery County, to adopt a stormwater utility program and sets forth specific criteria that must be included in the program. Thanks to the County Executive and County Council, Montgomery County is a national leader in addressing stormwater pollution and, in fact, adopted a utility charge ten years ago that complies with most of the criteria required by the new State law.

As required by State law, Bill 34-12 amends the County's Water Quality Protection Charge Law to:

1. Require all non-residential properties to pay the Charge (under current law, only those non-residential properties that drain to a residential stormwater facility are subject to the Charge).
2. Create a credit program for property owners that have stormwater management systems on their property.
3. Establish a hardship exemption for residential property owners who can demonstrate substantial financial hardship.

In order to mitigate the financial impact of the new law, Bill 34-12 establishes a three year phase-in for any increase in the Charge caused by the bill or its accompanying regulations. The bill also allows the County to perform maintenance on facilities on non-residential properties when the County retrofits those facilities, which will help encourage non-residential property owners to allow retrofits on their property.

In order to implement changes to the County's program by the State deadline of July 1, 2013, draft regulations were published in the County register in November 2012. The proposed regulations establish:

1. A 7-tier system for assessing the Water Quality Protection Charge on residential property based on the amount of impervious surface.
2. A credit program for eligible property owners with on-site stormwater treatment facilities. The proposed maximum credit for non-residential property is 50% of the assessed charge for traditional stormwater management practices and 60% if the entire impervious area is treated using Environmental Site Design (ESD).
3. A hardship exemption for residential property owners whose income is below 100% of the Federal poverty level.

The revenue from the Water Quality Protection Charge is used to meet the requirements of the County's stormwater permit, which is formally called the Municipal Separate Storm Sewer System Permit – or MS4 Permit. Our permit requires the County to retrofit 4,300 impervious acres not currently treated to the maximum extent practicable. I appreciate your introduction of this bill on the County Executive's behalf and respectfully request that Council to adopt it as expeditiously as possible so the County can comply with the State deadline. Thank you for the opportunity to testify.

I would be happy to address any questions the Council may have.



**City of Rockville
Testimony of Councilmember Tom Moore
Bill 34-12 Stormwater Management – Water Quality Protection Charge
January 15, 2013**

Good afternoon. My name is Tom Moore, and I serve on the Rockville City Council. I want to thank President Navarro and the members of the Montgomery County Council for the opportunity to provide testimony on Bill 34-12 – Stormwater Management - Water Quality Protection Charge.

As you know, EPA's mandated "pollution diet" for the Chesapeake Bay requires most Counties and Cities in Maryland to significantly increase their investment in local stormwater management. It is nearly impossible to comply with these requirements without establishing a fee structure to provide dedicated stormwater resources.

Rockville adopted its stormwater management utility fee in FY08. It is based on the premise that all property owners within the City limits pay the fee which is based on the amount of impervious surface on their property. Rockville commends the County for updating its Water Quality Protection Charge per the requirements of HB-987 (2012), by expanding the existing residential charge to include businesses and other properties not otherwise exempted under state law.

The Rockville Mayor and Council support Bill 34-12. Requiring landowners to pay a fee based on the level of imperviousness on their property approximates the amount of stormwater runoff they contribute and is the most equitable arrangement possible. Rockville's stormwater utility fee uses a credit system and we are pleased to see that Bill 34-12 allows property owners that treat stormwater on their land to apply for a credit towards the fee. The City has worked with other communities to provide education and technical assistance related to the implementation of stormwater utility fees, and we would welcome the opportunity to assist the County with this initiative.

As the County moves forward with this legislation, Rockville respectfully reminds you that that County has yet to pay our stormwater utility fee for the County's own considerable properties here in the City. Dating back to FY09, which was the first year the fee was charged to property owners, and through FY13, the County owes Rockville a total of \$329,249. The breakdown of the charges is as follows:

FY09 \$45,200,

FY10 \$55,596,

FY11 \$69,290,

FY12 \$71,164, and

FY13 \$87,999

The County's failure to pay its fair share has resulted in other property owners, including residents and nonprofit organizations, subsidizing the County. It also puts one of the best County programs in Maryland at odds with one of the State's best municipal programs when we should be allies working together to further stormwater management in the State.

Once this legislation is in place, the County will have ample additional revenue to pay our fee. We believe that the FY14 budget development process should include a mutually agreeable resolution to this critically important issue.

Thank you for the opportunity to speak to you today, and I would be happy to answer any questions that you may have.

Testimony of Diane Cameron
for the Montgomery County Stormwater Partners Network
on Bill 34-12
January 15, 2013

My name is Diane Cameron and I am the Coordinator of the Montgomery County Stormwater Partners Network. Formed in 2005 to support an improved stormwater permit for Montgomery County, the Partners have worked closely with DEP and other County agencies to protect and restore our streams. The Stormwater Partners support Bill 34-12 overall, and we offer strengthening changes. We look forward to sharing more-detailed comments on the proposed Regulation 17-12 with DEP in the near future.

Since 2006, the Stormwater Partners have been guided by a 12-point consensus agenda for the county's stormwater permit and water quality program (copy attached). Point number 12 reads:

Increase program funding while sending a "price incentive" for more-protective stormwater measures through broadening use of the County's Water Quality Protection Charge.

- ▲ Bill 34-12 and its regulation meet both of these objectives: they would increase total funding for the stormwater permit program, while creating incentives (fee reductions) for landowners who retrofit with trees, rain gardens, and other practices – and who maintain those practices.

Other key Points about 34-12 that we support:

- ▲ Provides increased, necessary funds for stormwater permit implementation;
- ▲ Includes a stormwater fee credit for homeowners who commit to maintaining a Green Street or similar practice located near their home;
- ▲ Includes all nonresidential property owners, correcting a longstanding inequity in the Water Quality Protection Charge, and
- ▲ The proposed 7-tier structure is also more equitable, since it charges landowners based roughly on the amount of imperviousness they own.

Changes still needed to improve the bill:

When landowners – from any sector – consider doing a green retrofit like a rain garden, tree planting or green roof, they ask themselves the following: *What's in it for me/ my family, company, organization?*

What are the benefits to the landowner of a Conservation Landscape or other green retrofit? What are the costs and the administrative hassles? And, are the costs and hassles worth the benefits?" The challenge that we face is ensuring that the answers to these questions will motivate owners to shoulder the burden of retrofitting in order to reap the benefits.

In order to craft the most successful stormwater fee credits possible, Montgomery County must:

- ▲ reduce the hassle factor;
- ▲ increase the credits and the price differential for those adopting “all-green retrofits;”
- ▲ Market the credits program. As part of this, communicate the benefits of green practices, and use social marketing to promote new norms in landscaping;
- ▲ engage local groups as partners, including through establishing a grants program; and
- ▲ further increase the Fairness Factor by including all imperviousness owners including all governmental landowners in the fee system.

Today we provide written comments on improvements needed to meet these objectives.

The City of Rockville has had a similar stormwater fee credit system in place for several years and thus far according to City staff, no one has applied for a stormwater fee credit – because it's easier to simply write a check. We suspect that this is due to a credit that is too small and a hassle that is too big.

We have worked fruitfully with DEP in furthering the RainScapes program, and the Stormwater Partners stand ready to work with DEP staff to help shape this program, including the credits and grants, to help ensure success in cleaning and restoring our streams, creating green businesses and jobs, and meeting our MS-4 permit mandates. Thank you for this public hearing and for considering our input.

The contributions and support of the following Stormwater Partners to these comments are gratefully acknowledged: Becky Hammer, Natural Resources Defense Council; Susan Eisendrath, Sierra Club; Anne Ambler, Neighbors of Northwest Branch; Kevin Jeffery, Clean Water Action; Jim Foster, Anacostia Watershed Society.

Further written comments on Bill 34-12 and Regulation 17-12.

- 1) **Include a grants program to nonprofit organizational partners** - Statewide Bill HB987, enacted in 2012, provides for (some say requires) a grants program to enable nonprofits to partner with local governments to provide stormwater practice design, planning and construction, and public outreach, among other functions. We urge Montgomery County to include this grants program as an amendment to Bill 34-12, and to set forth details to be added to the revisions to Regulation 17-12, after consultation with and input from local nonprofits including members of the Stormwater Partners.
- 2) **All landowners must pay their fair share of stormwater fees** - Montgomery County should charge all landowners, including all government entities, their fair share of stormwater fees. Unfortunately, HB987 exempted state government landowners from paying local stormwater fees. (We urge Montgomery County to support amending HB987 to correct this problem.)

Including Montgomery County's stormwater payments owed to the City of Rockville – Bill 34-12 and Regulation 17-12 should require Montgomery County to pay its own fair share of stormwater fees to the City of Rockville, since Montgomery County owns pollution-generating imperviousness within the City of Rockville. Montgomery has resisted making these payments to Rockville which is setting a bad example, and needs to turn this situation around immediately to model responsible and fair stormwater payments. (We respectfully disagree with Maryland's Attorney General on this point.)

- 3) **Stormwater Fee Structure needs to be tweaked** - Regarding Regulation 17-12: Though the 7-Tier fee structure is more equitable than the current billing method, it needs to be tweaked to be more equitable and to provide a strong and clear incentive to residential owners to reduce their imperviousness wherever possible. Especially, the Tier 3 for single family residential sites is too broad – it would charge the same fee for lots ranging from 1410 square feet to 3412 square feet of imperviousness. This spread is far too great for a single fee level, and creates little or no incentive for large driveway and roof owners to reduce or mitigate their imperviousness.

To correct this problem, we suggest breaking this into two Tiers.

- 4) **Credit program headed in the right direction**- Overall we think the credit program is headed in the right direction. We like the “maintenance credit” offered to landowners who adopt a Green Street or other green stormwater practice and agree to maintain it. And, we like that there is a differential with preference for “all green retrofits.”
- 5) **Credit system needs 5 improvements** - Based on our review of proposed Regulation 17-12, the credit levels need to be improved in four ways:

A) Greater clarity needed – the credit system as laid out in Regulation 17-12 is rather confusing. Example: the term “Adopt a Best Management Practice” in Table 2 (residential

credits) is vague. We understand that this refers only to green infrastructure practices like Green Street Bioretention facilities – please clarify this. And the non-residential credits are also somewhat confusing, given that it's hard to tell as now written, whether the 25% credits for sites that are controlling the water quality volume and the channel protection volume, are additive, meaning that sites that have stormwater systems controlling both volumes will receive a total of a 50% credit.

B) The credits for green retrofits need to be increased – We have talked with DEP staff in the recent past about the need to create incentives for landowners to adopt green stormwater retrofits. Our preference is to give credits (fee reductions) only for green infrastructure practices like rain gardens, trees and conservation landscapes, because these by far carry the most water quality and other benefits, but DEP sees a need to also give some credit to landowners who have built stormwater ponds and other non-green practices.

Given the county's desire to give credits to both gray and green practices, we then are looking for a credit system that creates the strongest incentive to go green, including the credit level itself and the difference between gray and green credit levels. The current proposed credit for landowners who invest in green stormwater retrofits must be increased. The proposed 60% fee reduction offered to non-residential owners who invest in an all-green stormwater retrofit, may be too low of an inducement once the "money math" is done for a given site. Instead, landowners who adopt an all-green retrofit approach should be offered an 85% or greater credit.

C) Increase the credit differential to benefit those "going all green" - For non-residential and multi-family sites, the proposed differential between an all-green (all ESD) approach (60% fee reduction) and a partially green approach (mixed set of green and grey practices – 50% fee reduction) proposed is too low – it's only a 10% difference. The difference should be much greater.

D) The proposed system for single-family residential owners needs to be revised to create an effective set of incentives:

- * Table 2 on page 7 of proposed Regulation 17-12 contains a set of residential credits for various retrofit practices. Overall, the proposed credit levels are too low, with the range being from 10% up to 25% for the credits. Instead, the credit range should be more like 25% to 85%. And, tree plantings need to be added. If the credits are not big enough, and if the administrative hassle is too great, this program won't induce the kind of widespread neighborhood greening that our streams need and that the MS-4 requires.

We understand that DEP is concerned about the potential for lost revenue that could result from increased credit levels inducing massive increases in participation in this program. However, lost revenue from increased participation is unlikely to be a big problem for DEP (given historically low rates of participation in similar programs in the region and in the RainScapes Program). Alternatively, perhaps this should be considered a problem

that DEP would be lucky to have. After all, property owners retrofitting and maintaining green BMPs are reducing DEP's retrofitting burden. And the bottom line is that nobody's going to do retrofits if they're not worth enough credit-wise. The point of the credits is to serve as an incentive for landowners to self-retrofit. The credits need to be priced right if this program is going to be successful.

If DEP really is concerned about losing too much revenue from retrofits, then we urge them to counterbalance those losses by raising fees overall. Virtually every stormwater fee we've seen has been too low to either (a) encourage retrofits or (b) fully cover local agencies' stormwater-related costs, much less accomplish both objectives.

We look forward to working with DEP in evolving this WQPC credit and related programs, and to reviewing DEP's economic analysis underlying this bill and regulation and sharing further comments in the future.

E) An Education & Awareness Program needs to be built into the credit program --and it can reinforce other elements of DEP's MS-4 Permit work as well (RainScapes, promoting benefits of going green, etc.). The credit program needs to both involve and engage the community to work towards new solutions and improvements. RainScapes has been working with this principle to an extent, with a small budget and staff. We encourage the expansion of the RainScapes program to adopt more social marketing strategies. Social marketing strategies such as competitions between neighbors can be effective (i.e., utilizing competition to encourage cooperation and social support, e.g., neighborhood challenges to get them to compete for having the most neighbors with the most credits.) Other strategies such as promoting examples of people who have successfully gotten credits could help to beneficially change social norms around landscaping and other behaviors.

Since residents and other landowners will look at this credit program from their own perspective of "*what will I get out of this*," the marketing of the credits and the larger RainScapes program must also take this approach. People are more inclined to take action when they are faced with what they could or are losing if they don't use the credits. This type of message is motivating as long as it's coupled with a solution (too much negative messaging can people off, but a little can motivate them with a bit of challenge, e.g., "I don't want to loose the credit or my drinking water quality or green space, etc.")

- 6) **Present the administrative protocol – and keep it simple, fast and easy.** Regulation 17-12 doesn't specify the administrative protocol for landowners seeking to apply for the fee reduction credits. Basically, the protocol will borrow from the RainScapes Rebates program, which has evolved over the years. We support DEP's continued evolution towards more user-friendly RainScapes protocols. It's essential that DEP make the applications as easy and quick as possible, otherwise too few landowners will bother with the hassle – and then the credits won't achieve their intended effect. Unless the paperwork is simple, fast and easy, the program won't

entice enough landowners to "go green at home" with tree plantings, rain gardens, green roofs, or conservation landscapes.



15

Montgomery Soil Conservation District

18410 Muncaster Road - Derwood, MD 20855 - Phone (301) 590-2855
www.montgomeryscd.org

January 15, 2013

The Honorable Nancy Navarro
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20950

Re: Bill 34-12, Stormwater Management – Water Quality Protection Charge

Dear Council President Navarro and Council Members:

On behalf of the Montgomery Soil Conservation District (MSCD) I would like to thank you for the opportunity to provide comments on Bill 34-12, Storm water Management – Water Quality Protection Charge (WQPC). The staff and Supervisors of the MSCD provide technical assistance to farmers and rural landowners and assist them in implementing conservation practices that prevent soil erosion and protect water quality. In many ways, the best management practices (BMPs) implemented by farmers accomplish the same goals as stormwater management efforts in urban portions of the County.

The reality is that in most areas of the Agricultural Reserve storm water is controlled through well-managed areas of open fields, forests, and wetlands. The vast amounts of impervious surfaces that require storm water management in the more urban areas of the County are simply not a problem in the Ag Reserve. This is evidenced by the fact that the streams in our agricultural areas have the highest water quality in the County.

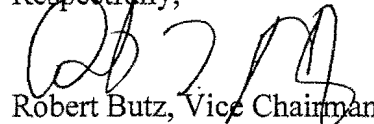
Rural landowners and farmers who pay this fee are in effect paying for problems associated with down County development. A better solution would be to reward farmers for managing the stormwater in their communities, or provide a funding source to increase efforts to implement BMPs through the work of the Soil Conservation District. We offer the following suggestions for amendments to the bill to help accomplish this:

- 1) Agricultural landowners who manage the soil, water, and other natural resources on their property through a Soil Conservation and Water Quality Plan (SCWQ Plan) should not be subject to a storm water fee.
- 2) The credit program outlined in Bill 34-12 should also apply to any landowner that has a SCWQ Plan.
- 3) Resources from the WQPC should be provided to MSCD for conservation planning and BMP implementation in the Ag Reserve to demonstrate to the agricultural sector that their WQPC funds are benefitting rural communities.

Included with our testimony is a proposal MSCD has developed in cooperation with the Department of Environmental Protection (DEP), which would form a partnership to help insure that funding from the WQPC that comes from rural areas of the County would provide for water quality benefits within the agricultural communities from which the funds originate. Addressing stormwater issues on small headwater streams in rural areas is more cost efficient and can be more effective than using the WQPC fees for down county projects.

While many of the details of this proposal must be worked out, we believe it represents a more targeted approach to improving water quality in the agricultural portions of the County and insuring that the agricultural sector is able to meet the stringent requirements of the Chesapeake Bay Total Maximum Daily Load (TMDL) restoration plan.

Respectfully,

A handwritten signature in black ink, appearing to read 'Robert Butz', is written over the typed name.

Robert Butz, Vice Chairman
Montgomery SCD Board of Supervisors

Cc: Council Members
Bob Hoyt, DEP Director
Jeremy Criss, Ag Services Division Manager

Partnership for Water Quality in Montgomery County

Montgomery County Department of Environmental Protection

Montgomery Soil Conservation District

Cooperative Strategy for Addressing Montgomery County

TMDL Goals for the Agricultural and Urban Sectors

BACKGROUND

The Montgomery County Department of Environmental Protection (DEP) and the Montgomery Soil Conservation District (MSCD) both share responsibilities for protecting soil, water, and other natural resources and habitats in Montgomery County. While DEP operates county-wide, their efforts to improve water quality are often focused on the urban and suburban areas of the county. This is particularly true as it relates to the County's Municipal Separate Storm Sewer System (MS4) Permit and the Watershed Implementation Plan (WIP) II for meeting TMDL requirements for the developed areas of the County. Operating predominately in the rural portions of the county, MSCD is the conduit by which agricultural landowners may receive technical assistance and project design for water quality best management practices. While DEP's primary focus may be in more urban environments and MSCD's in more rural, a unique opportunity presents itself for collaborative effort between our two agencies.

There are approximately 500 parcels with over 10,000 acres of Ag Assessed property within the County's designated MS4 permit area. In addition, there are also agricultural properties that are assessed residential within the MS4 area. We believe a real need exists to provide outreach and technical assistance to "Agriculturally" assessed properties located outside the Agricultural Reserve. Unfortunately, the MSCD's ability to reach these landowners and provide an effective level of assistance is compromised by reduced funding at the Federal, State, and County level. It is for these reasons that the MSCD is requesting financial support from the Water Quality Protection Charge (WQPC) through a partnership with DEP, that will provide resources necessary to explore the potential for stormwater control practices on these agricultural parcels and further augment our existing outreach to agricultural landowners in the agricultural reserve.

JUSTIFICATION

The three main objectives of this proposal are:

- I. Focus soil conservation and water quality planning on the agricultural properties within the County's MS4 permit area to explore opportunities for installing best management practices (BMPs) to reduce stormwater and nutrients, and develop a database and map layer of these potential restoration sites.
- II. Provide WQPC resources to MSCD for conservation planning and BMP implementation in the Ag Reserve areas to demonstrate to the agricultural sector that their WQPC funds

are benefiting rural communities. Estimates indicate over 4,000 improved properties within the Ag Reserve that are assessed the WQPC, for a total of \$286,000 per year.

- III. Develop a goal oriented, implementation focused outreach initiative to inventory and document installation of BMPs on Agricultural Preservation parcels that drain into County MS4 watersheds, and catalog the potential for additional BMP implementation.

Based on the TMDL Goals and the strategy outlined in the proposed WIP II, challenges exist for both the agricultural sector and the urban/suburban portions of the County to meet many of the nutrient reduction targets. Compounding the situation is the 50% reduction in MSCD Conservation Planning staff funded by the County through the Department of Economic Development. This dramatic reduction involved the elimination of an experienced Soil Conservation Planner position in FY2010, and has negatively impacted the MSCD's ability to reach TMDL goals for the agricultural sector.

Urban stormwater retrofits are very expensive, so the County can realize substantial cost savings by identifying additional sites on agricultural properties within the MS4 area where BMP implementation will result in water quality improvements and stormwater mitigation. With both agencies working to protect our environment, there is considerable synergy in their approach to addressing Montgomery County's restoration challenges. This funding partnership will expand opportunities for the agencies to combine resources and expertise in tackling the County's TMDL Goals.

DESCRIPTION AND OBJECTIVES

MSCD works with landowners throughout the County to implement BMPs that improve water quality and reduce storm water impacts. Most conservation practices that farmers install have stormwater benefits in addition to the associated nutrient and sediment load reductions. (Please see the attached sheet of practice descriptions.) Through the development of Soil Conservation and Water Quality (SCWQ) Plans for landowners, MSCD makes recommendations on conservation techniques that improve soil health and increase infiltration capacity. By allowing more rain to permeate into the soil rather than running off into streams, these practices prevent soil erosion and control stormwater flows. Some examples of these practices include crop rotation, no-till farming, cover crops, rotational grazing, and pasture management. There are also a number of structural BMPs that provide stormwater control in addition to nutrient and sediment reductions.

Providing resources to MSCD through the WQPC will help DEP insure that the rural landowners that pay the WQPC will have tangible water quality benefits right in their own communities. Furthermore, the agencies will collaborate on an outreach campaign to assess the conservation potential on agricultural properties within the urban/suburban portions of the county. Working with the owners of this 10,000+ acre land base will create a catalog of potential conservation practices that could be applied to these farms to generate nutrient and stormwater reductions. Some of these practices may result in nutrient credits that could be used to help the county achieve their MS4 permit goals at a considerable discount to more expensive urban stormwater management practices.

Funding from the WQPC will be used to restore the previously eliminated County Conservation Planner position, create a new Soil Conservation Technician position, and replace deficiencies in

MSCD's operating budget. A portion will also go toward salary reimbursements MSCD has been required to provide to DED to compensate for General Fund budget reductions. The new Conservation Planner will develop an outreach campaign and focus SCWQ Planning efforts on the agricultural properties within the MS4 permit sections of the county. In addition, a Soil Conservation Engineering Technician position is necessary to provide technical assistance, project design, and surveying for the increased level of BMP implementation required to meet the TMDL. It is anticipated that many of the operations in the MS4 sections of the county will be equestrian facilities, horticultural or nursery operations, small vegetable operations, and other niche agricultural producers. These operations have specialized needs and often require considerably more staff time than our traditional agricultural clients. MSCD has experienced an increase in requests from these new and emerging clients over the last couple years, and with adequate staff, will be well positioned to provide them with technical assistance and ideas for improving their operations. There are also a number of cost-share programs currently available to assist these clients with the implementation of conservation practices.

A portion of the proposed funding will also be used to establish a rental equipment program for conservation practices and encourage SCWQ planning among Cover Crop program participants. Many landowners are interested in a variety of conservation planting techniques, but may not have the equipment necessary to carry out these practices. This may include no-till planting practices for cover crop and pasture reseeding, as well other conservation equipment such as aerators, conservation tillage, and compost spreaders. Although Cover Crop program participants are not required to have an updated SCWQ Plan, many would benefit from knowing what other conservation opportunities exist on their farms. By establishing a County incentive linked to the MDA Cover Crop program, Montgomery County will increase participation in the program and promote the conservation planning needed to achieve enhanced levels of BMP implementation.

PROPOSED BUDGET EXPENDITURES

Funding received by MSCD will be used to cover the following current budget shortfalls:

| | |
|--|------------------|
| Re-Instate Resource Conservationist Position | \$100,000 |
| Soil Conservation Engineering Technician | |
| Including benefits, equipment, rent, etc | \$60,000 |
| MSCD Reimbursement to DED | \$20,000 |
| Operating Funds* | \$50,000 |
| Conservation Matters Newsletter | \$5,000 |
| Communications, phones, copiers, etc. | \$5,000 |
| Office supplies, equipment, printing, etc. | \$3,000 |
| Conservation Equipment Rental Program | \$20,000 |
| IT Equipment | \$10,000 |
| Workshops, Seminars, Outreach to small | |
| Agricultural landowners | \$7,000 |
| County Cover Crop Incentive ^ | \$50,000 |
| TOTAL REQUEST | \$280,000 |

* MSCD receives the lowest operating budget of all Soil Conservation Districts in the state, and has deferred the purchase of equipment, tools, and IT hardware for years because of this shortfall. We cannot meet the rigorous goals outlined in the TMDL without proper resources.

^ An incentive payment of \$5/acre for parcels enrolled in the Cover Crop program that have a current SCWQ Plan will serve as a statewide model for encouraging conservation planning and greater participation in the Cover Crop program, which is one of the best mechanisms for reaching water quality goals.

STRATEGY HIGHLIGHTS

- WQPC funds collected from the Agricultural Reserve areas of the county will be used to fund water quality projects through DEP financial support provided to the MSCD.
- Focused outreach and technical assistance directed at agricultural property owners within sections of the County covered under the MS4 permit will demonstrate opportunities for stormwater control, sediment reduction, and nutrient credit trading potential to achieve TMDL goals.
- Design and construct conservation best management practices on agricultural parcels within the MS4 permit areas of the County.
- The cost of Ag BMPs are shared by private citizens – this represents a tremendous LEVERAGING opportunity, whereby WQPC funds would actually have greater impact by encouraging private investment in water quality improvements.
- MSCD, in cooperation with DEP, will develop a database and GIS layer for ag properties outside of the Ag Reserve as well as Ag Preservation parcels in watersheds that drain to the MS4 permit area, and target 20 SCWQ Plans on 1,000 new acres a year within the urban/suburban areas of the County.
- This partnership will help to demonstrate a united approach to addressing water quality challenges in Montgomery County, and provide collaboration between the agricultural and urban/suburban sectors.
- The “aggressive” nutrient reduction targets established for the ag sector under the WIP II process cannot be achieved without additional resources. All Montgomery County agencies must work together to insure that we do everything we can to meet the Bay goals.
- Establish a rental program to provide more farmers access to conservation equipment for no-till planting, pasture renovation, compost spreading, and other practices that reduce stormwater impacts and nutrient and sediment loads. Cover Crops, no-till farming, and establishing well maintained pastures are some of the most economical and effective methods of controlling runoff and reducing nutrient loss from agricultural fields.
- Create a Cover Crop incentive payment program that will encourage broader participation by County farmers and promote the development of SCWQ Plans, which are the genesis of BMP implementation on agricultural properties.



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION, MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:
5090
EVN40/09/RE092

FEB 25 2013

071708

Montgomery County Council
100 Maryland Avenue, Fifth Floor
Rockville, MD 20850

Ladies and Gentlemen:

SUBJECT: MONTGOMERY COUNTY BILL 34-12, STORMWATER MANAGEMENT - WATER
QUALITY PROTECTION CHARGE

As the Department of Defense (DoD) Regional Environmental Coordinator (REC) for EPA Region III and on behalf of all the military services, we are responsible for coordinating responses to various environmental policies or regulatory matters of interest. The DoD appreciates the opportunity to provide comments regarding Montgomery County Council Bill 34-12, Stormwater Management - Water Quality Protection Charge.

There are several concerns we would like to discuss. First, in accordance with guidance/direction from the Maryland Department of the Environment, federal facilities already submit Erosion and Sediment Control Plans for land disturbing projects to the State vice County for approval. Therefore, submitting these plans to the County for a sediment control permit, as currently proposed, is redundant and should not pertain to federal facilities.

Second, Bill 34-12 would require property owners to place in County records an easement and agreement related to BMP inspection and maintenance. Federal properties, to include DoD installations, are prohibited from placing easements on federal lands and DoD installations in Montgomery County would not be able to comply with this provision. We request that you place specific exemption language making it clear that federal lands are exempt from this easement requirement.

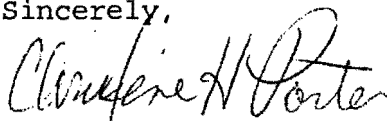
Third, we do not believe federal law permits federal agencies to pay the proposed Water Quality Protection Charge as set out in Section 19-35 of the proposed bill. The Clean Water Act was amended in 2011 to provide for the payment of reasonable service fees by federal agencies. However, payment is conditioned on several factors. For a state or local stormwater charge to be payable by a DoD facility, a stormwater service charge must: (1) relate to the control and abatement of water pollution; (2) be reasonable; (3) be nondiscriminatory; (4) be based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution; (5) be based in terms of quantities of pollutants, or

volume or rate of stormwater discharge or runoff from the property or facility; (6) be used to pay or reimburse the costs associated with any stormwater management program; and (7) may include the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge (33 U.S.C.A. § 1323(c)).

There are a number of DoD facilities within Montgomery County. Most of these are or will be regulated by the Maryland MS4 Phase II General Permit. In addition, stormwater runoff from a number of these facilities discharges directly to U.S. waters vice into Montgomery County's MS4 system. Therefore, the Water Quality Protection Charge for these facilities with respect to stormwater discharges to the County MS4 system would not clearly relate to the control and abatement of water pollution, be reasonable, be based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution, or be based in terms of quantities of pollutants, volume, rate of stormwater discharge, or runoff from the property.

If you have any questions, please contact Lieutenant Commander Mark P. Nevitt at mark.nevitt@navy.mil, telephone (757) 322-2938 or Mr. William Bullard at william.bullard@navy.mil or telephone (757) 341-0429.

Sincerely,



CHRISTINE H. PORTER
Director for Regional
Environmental Coordination
By direction of the Commander

Copy to: U.S. Army REC, Region III (Ms. Amy Alton)
U.S. Air Force REC, Regions I, III (Mr. Ron Joyner)

Fiscal Impact Statement

Executive Regulation 17-12, Stormwater Management – Water Quality Protection Charge

1. Executive Regulation Summary.

This regulation amends Executive Regulation 6-02 AM which establishes the procedure to set rates for and implement The Water Quality Protection Charge (WQPC) and applies to all residential and all non-residential properties in the County based on contribution to runoff to the County's stormwater management system. This regulation would allow for the implementation of the following:

- a. A seven-tier method for assessing the Water Quality Protection Charge (WQPC or Charge) on residential properties based on the amount of impervious surface.
- b. Assess the Charge to all non-residential properties, including commercial properties and not-for-profit organizations.
- c. A credit program for eligible property owners with on-site stormwater treatment facilities. Eligibility for the credit program is based on the type of stormwater management practice and level of treatment that the facility provides.
- d. A hardship exemption for residential property owners whose household income is below 100% of the Federal poverty level, which is mandated under a recent amendment to the state's stormwater management law (*see* Md. Code Ann., Envir. § 4-202.1 (j)).
- e. A hardship exemption for any categorized 501(c)(3) non-profit organization provided that the Charge exceeds 0.4 percent of the organization's total revenue.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There are new administrative and program costs associated with implementing the proposed changes to Bill 34-12 and Executive Regulation 17-12 and include: contractual services for geographic information system (GIS) impervious area data processing; contractual resources to administer the credit and hardship exemption programs. In addition, approximately one workyear is devoted to this effort in the current year. Costs funded by the WQPC, already included in the Department Environmental Protection's FY14 Recommended Budget include:

- \$45,760 annually for contractual GIS services to maintain impervious surface layer and associated data updated, and
- \$89,100 annually for contractual resources to coordinate and administer the new credit program.

Additional costs not reflected in the FY14 CE Recommended Budget are contractual resources needed to coordinate and administer the Hardship program for residential and 501(c)(3) non-profit organizations in the Department of Finance. The estimated cost for

these contractual resources is also \$89,100 annually, and the WQPC rate will need to be increased by \$0.40 to cover this additional cost.

The financial hardship exemption program for residential properties and non-profit 501(c)(3) organizations as well as the credit program do not affect total revenues because the WQPC rate would be adjusted to generate sufficient revenue to fund the operating and capital programs supported by the WQPC.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The estimated first year cost to implement Executive Regulation 17-12 is \$223,960, of which \$134,860 is included in the March 15 Executive Recommended Budget.

The estimated six-year cost of these expenditures is \$1,343,760.

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the regulation.

DEP will utilize existing resources to implement the proposed rate structure changes effective July 1, 2013. Approximately one workyear is devoted to this effort during the current fiscal year.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

There should be no effect on other duties assuming additional resources are provided to administer the credit system authorized in the proposed legislation.

8. An estimate of costs when an additional appropriation is needed.

Appropriation in the amount of \$223,960 is needed in FY14.

9. A description of any variable that could affect revenue and cost estimates.

The assumptions for the hardship and credit programs which require offsetting revenue may differ depending on the number of qualifying applicants. The cost estimates associated with administering these new programs may also differ depending on the number of applicants and review of the applications.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a regulation is likely to have no fiscal impact, why that is the case.

Not applicable.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

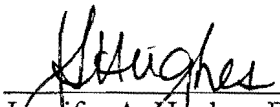
Gladys Balderrama, Department of Environmental Protection

Steven Shofar, Department of Environmental Protection

Vicky Wan, Department of Environmental Protection

Alex Espinosa, Office of Management and Budget

Matt Schaeffer, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

4/3/13
Date

Economic Impact Statement, Bill 34-12, Stormwater Management – Water Quality Protection Charge

Background:

The original Economic Impact Statement for Bill 34-12 was submitted to Council on October 25, 2012, as part of the County Executive's transmittal package for Bill 34-12. Since then, discussions about Bill 34-12 at Council and preparation of the County Executive's Recommended FY14 budget have resulted in decisions that provide greater clarity for some of the underlying assumptions in the original EIS.

The County Executive's Recommended FY14 budget includes projected revenues and expenditures for the Water Quality Protection Charge (WQPC) Program and a proposed Equivalent Residential Unit rate ("WQPC rate") to support the program, which is a key factor in determining the amount of the WQPC for all properties. The Transportation, Environment and Infrastructure (T&E) Committee recommended that Bill 34-12 be amended to include: (1) a financial hardship exemption for non-profit organizations; and (2) a grant program that allows DEP to contract with non-profit organizations to provide watershed protection and improvement activities. The County Executive supports both of these recommendations and they are reflected in the proposed Executive Regulation 17-12 (attached), which the County Executive has transmitted to Council prior to adoption of Bill 34-12, at Council's request, in order to provide a full picture of how the bill will be implemented. This Revised EIS reflects the assumptions outlined in the County Executive's Recommended FY14 budget, the creation of a financial hardship exemption for non-profit organizations, the creation of a grant program, and all of the requirements of proposed Executive Regulation 17-12.

This Bill (with the recommended amendments discussed above) applies to most¹ non-residential properties and all residential properties in the County for purposes of stormwater management. The Bill would:

- a. Extend the Water Quality Protection Charge (WQPC or Charge) to include non-residential properties, which currently are covered only if they fall under the definition of an associated non-residential property (ANR)²;
- b. Extend the WQPC for an ANR to include the remainder of the ANR's impervious area not currently assessed;
- c. Phase in over three fiscal years any increase in the Charge to non-residential properties resulting from the expanded scope of the WQPC as described in a and b above (i.e. any impervious surface not currently draining to a residential pond);
- d. Phase in over three years any increase in the Charge to residential properties resulting from the changes to the Charge caused by the bill and accompanying regulations (attached);
- e. Establish a credit program that would reduce the Charge to residential and non-residential properties having a County approved stormwater management system; and
- f. Provide a Hardship Exemption for residential and non-profit 501(c) 3 property owners who are able to demonstrate substantial financial hardship.
- g. Provide a grant program for non-profit organizations to perform water quality improvement activities

1. The sources of information, assumptions, and methodologies used.

The economic impact is determined by comparing the amount of a property's FY13 WQPC to the amount of the property's FY14 WQPC under Bill 34-12 based on the WQPF rates outlined in the County Executive's Recommended FY14 budget and the program requirements outlined in proposed Executive Regulation 17-12.

2. A description of any variable that could affect economic impact statements.

The variables that will affect the economic impact to any given property include the amount of impervious surface on that property, the amount of the credit that the property owner is entitled to and whether the property owner qualifies for a hardship exemption. Program costs have been budgeted to meet the MS4 Permit requirements. An expanded hardship program will cause a WQPC rate increase to cover the expanded hardship costs, which would increase the overall WQPC to property owners.

3. The bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property value in the County.

This revised EIS reflect an updated WQPC rate of \$86.90 from \$85.40 (WQPC rate in CE Recommended FY 14 Budget) caused by the inclusion of a hardship for non-profits, the cost of administering non-profit exemption, and to cover the lost revenues for exempting non-profits. In FY14, when using the revised WQPC rate (see table below) and the proposed amendments included in the attached Executive Regulation, the bill's effect will be positive to 90% of single family residences and townhomes (meaning the Charge will be less than it was in FY13) and the impact will be negative to 10% of the single family residences and townhomes (the Charge will be greater in FY14 than it was in FY13). For 29% of nonresidential properties the effect will be positive (the Charge will be less than it was in FY13). The bill will have a negative effect on the remaining non residential properties. The percentages assume no reductions in the Charge for credits or hardship exemptions.

For the residential property owners the breakdown of the Recommended FY14 Charge compared to the FY13 Charge is as follows:

1. Single-family residential property owners :

- a. There are an approximately 163,000 single-family residential properties.
- b. Approximately 145,000 residential properties (or 89%) will pay less.
- c. Approximately 18,000 residential properties (or 11%) will see an increase in the Charge.
- d. The differences in the Charge and the economic effects by tier group for single-family residential properties are presented in the table below. The total economic effect due to the changes in the Charge for single-family residences is a savings of only \$102,000. Therefore, overall there is little economic effect due to the proposed changes in the Charge. However, for single-family residential properties in tier groups 1 through 3, the total savings is approximately \$1.598 million which is offset by the increase of \$1.496 million for properties in tier groups 4 through 7.

| Tier Group | FY13 Charge | FY14 Charge | Difference | Number of Properties | Economic Effect |
|-------------------|--------------------|--------------------|-------------------|-----------------------------|------------------------|
| Tier 1 | \$92.60 | \$28.68 | (\$63.92) | 4,695 | (\$300,104) |
| Tier 2 | \$92.60 | \$43.45 | (\$49.15) | 11,478 | (\$564,144) |
| Tier 3 | \$92.60 | \$86.90 | (\$5.70) | 128,663 | (\$733,379) |
| Tier 4 | \$92.60 | \$130.35 | \$37.75 | 5,502 | \$207,701 |
| Tier 5 | \$92.60 | \$173.80 | \$81.20 | 9,275 | \$753,130 |
| Tier 6 | \$92.60 | \$217.25 | \$124.65 | 641 | \$79,901 |
| Tier 7 | \$92.60 | \$260.70 | \$168.10 | 2,706 | \$454,879 |
| TOTAL | | | | 162,960 | (\$102,017) |

2. *Townhome property owners:*

- a. There are an approximately 45,000 townhomes.
- b. Approximately 43,000 properties (or 96%) will pay less.
- c. Approximately 2,000 properties (or 4%) will see an increase in the Charge.
- d. The amount of increase for these properties are described below

| Tier Group | FY13 Charge | FY14 Charge | Difference | Number of Properties | Economic Effect |
|--------------|-------------|-------------|------------|----------------------|-------------------|
| Tier 1 | \$30.56 | \$28.68 | (\$1.88) | 42,568 | (\$80,028) |
| Tier 2 | \$30.56 | \$43.45 | \$12.89 | 1,844 | \$23,769 |
| Tier 3 | \$30.56 | \$86.90 | \$56.34 | 106 | \$5,972 |
| TOTAL | | | | 44,518 | (\$50,287) |

3. *Non residential property owners:*

Of those properties that will see an increase in the Charge, the amount of the increase and the number of properties receiving that increase are as follow:

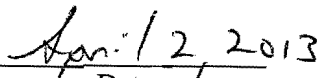
| Amount of Increase in FY14 | Number of Properties |
|----------------------------|----------------------|
| \$>0, <=\$100 | 2,905 |
| \$>100, <=\$200 | 894 |
| \$>200, <=\$300 | 586 |
| \$>300, <=\$400 | 373 |
| \$>400, <=\$500 | 251 |
| \$>500, <=\$600 | 170 |
| \$>600, <=\$700 | 143 |
| \$>700, <=\$800 | 79 |
| \$>800, <=\$900 | 94 |
| \$>900, <=\$1,000 | 72 |
| \$>1,000, <=\$2,000 | 328 |
| \$>2,000, <=\$3,000 | 93 |
| \$>3,000, <=\$4,000 | 44 |
| \$>4,000, <=\$5,000 | 21 |
| \$>5,000, <=\$6,000 | 15 |
| \$>6,000, <=\$7,000 | 7 |
| \$>7,000, <=\$8,000 | 3 |
| \$>8,000, <=\$9,000 | 2 |
| \$>9,000, <=\$10,000 | 3 |
| \$>10,000, <=\$20,000 | 7 |

4. If a bill is likely to have no economic impact, why is that the case?

The bill will have an economic impact on all covered properties, either negative or positive and the effect depends on which tier residential properties belong as described in Section 3 above.

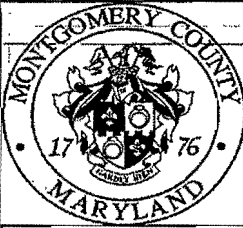
- 5. The following contributed to and concurred with this analysis:** Steve Shofar, Gladys Balderrama and Vicky Wan, Department of Environmental Protection; David Platt and Mike Coveyou, Department of Finance.


Joseph F. Beach, Director
Department of Finance


Date

¹ The municipalities of Rockville, Gaithersburg, and Takoma Park have their own stormwater program. The State law specifically exempts certain properties including properties owned by the State, a unit of the State government, a county, a municipality, or a regularly organized volunteer fire department that is used for public purposes.

² An Associated Non-Residential property (ANR) is a non-residential property that drains to a stormwater facility that primarily serves residential properties. ANRs are charged based on only the amount of impervious surface that drains to the residential stormwater facility.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|---|------------------------|
| Subject Water Quality Protection Charge | Number 17-12 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

Montgomery County Regulation on:

WATER QUALITY PROTECTION CHARGE

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
DEPARTMENT OF FINANCE

Issued by: County Executive
Regulation No. 17-12

Authority: Code Section 19-35
Supersedes: Executive Regulation 6-02AM
Council Review: Method (1) under Code Section 2A-15
Register Vol. 29 No. 7

Comment Deadline: September 30, 2012

Effective Date: _____

Sunset Date: None

Summary: This regulation amends Executive Regulation 6-02AM, which establishes the procedure to set rates for and implement a water quality protection charge to be applied to certain properties based on those properties' contribution of runoff to the County's stormwater management system.

Address: Written comments on these regulations should be sent to:

Steve Shofar, Chief
Division of Watershed Management
Department of Environmental Protection
255 Rockville Pike
Rockville, Maryland 20850

Staff Contact: For further information or to obtain a copy of this regulation, contact Steve Shofar at (240) 777-7736.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|---|------------------------|
| Subject Water Quality Protection Charge | Number 17 12 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

Section 1. General Provisions

- A. **Authority.** In accordance with the authority conferred under Chapter 19, Section 19-35, of the Montgomery County Code, [1994] 2004, as amended (hereinafter referred to as the "Code"), the County Executive hereby promulgates this regulation for the purpose of implementing the County's Water Quality Protection Charge as set forth in Chapter 19 of the Code.
- B. **Applicability.** This regulation applies to all owners of residential property and [associated] nonresidential property in Montgomery County, Maryland.

Section 2. Definitions

The definitions of the terms used in this regulation are provided in Chapter 19, Section 19-21, of the Code. For purposes of this regulation, the following additional words and phrases will have the meaning respectively ascribed to them in this regulation unless the context indicates otherwise:

Agricultural Property – A property that is used primarily for agriculture, viticulture, aquaculture, silviculture, horticulture, or livestock and equine activities; temporary or seasonal outdoor activities that do not permanently alter the property's physical appearance and that do not diminish the property's rural character; or activities that are intrinsically related to the ongoing agricultural enterprise on the property.

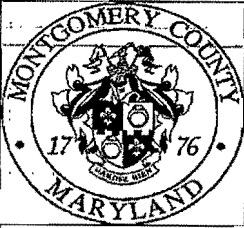
Base Rate - The annually designated dollar amount set by the County Council to be assessed for each equivalent residential unit of property that is subject to the Water Quality Protection Charge.

Condominium - A [residential] property that is subject to the condominium regime established under the Maryland Condominium Act.

Director - The Director of the Montgomery County Department of Environmental Protection or the Director's designee.

Equivalent Residential Unit or ERU - The statistical median of the total horizontal impervious area of developed single family detached residences in the County that serves as the base unit of assessment for the Water Quality Protection Charge. The designated ERU for Montgomery County equals 2,406 square feet of impervious surface.

Multifamily Residential Property - A mobile home park or a residential building where one or more dwelling units share a common entrance from the outside with other dwelling units that are arranged above, below or next to one another in the same building[.], and any housing unit that is subject to the



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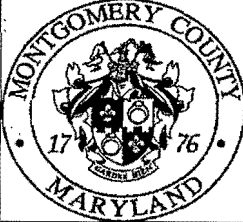
condominium regime established under the Maryland Condominium Act.

Water Quality Protection Charge or Charge - An assessment levied by the Director of Finance to cover the cost of constructing, operating, and maintaining facilities within the County's stormwater management system and fund related expenses allowed under applicable state law based on the impact of stormwater runoff from the impervious areas of developed land in the County.

Section 3. Classification of Properties

For purposes of determining the appropriate assessment rate, all properties that are subject to the Water Quality Protection Charge are assigned to one of the following classifications:

- A. [Detached]Single Family Residential Tier 1 (SFR1): For single[-family residential property: For detached single-]family residential properties[,] where the estimated total impervious area is less than or equal to 1,000 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- B. [Attached single-family residential property: Attached single-family residential properties, which include townhouses and duplexes, contain the same kind of impervious area as detached single-family residential properties.]Single Family Residential Tier 2 (SFR2): For single family residential properties where the estimated total impervious area is greater than 1,000 square feet and less than or equal to 1,410 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- C. [Multifamily residential property: For multifamily residential properties the impervious area includes the residential structures that contain the dwelling units, the sidewalks, parking lots and any other permanent installations on the developed parcel, whether under single or common ownership, that is impenetrable by water.] Single Family Residential Tier 3 (SFR3): For single family residential properties where the estimated total impervious area is greater than 1,410 square feet and less than or equal to 3,412 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- D. [Associated nonresidential property: Associated nonresidential] Single Family Residential Tier 4 (SFR4): For single family residential properties where the estimated total impervious area is greater than 3,412 square feet and less than or equal to 3,810 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.



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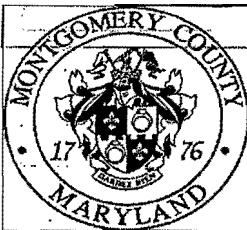
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- E. Single Family Residential Tier 5 (SFR5): For single family residential properties where the estimated total impervious area is greater than 3,810 square feet and less than or equal to 5,815 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- F. Single Family Residential Tier 6 (SFR6): For single family residential properties where the estimated total impervious area is greater than 5,815 square feet and less than or equal to 6,215 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- G. Single Family Residential Tier 7 (SFR7): For single family residential properties where the estimated total impervious area is greater than 6,215 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- H. Multifamily residential property: For multifamily residential properties the impervious area includes the residential structures that contain the dwelling units, the sidewalks, parking lots and any other permanent installations on the developed parcel, whether under single or common ownership, that is impenetrable by water.
- I. Nonresidential property: Nonresidential properties may include commercial properties such as office buildings, hotels, retail establishments or industrial properties such as factories and warehouses. [Associated nonresidential] Nonresidential properties also include properties owned by homeowner associations, not-for-profit entities such as religious institutions, healthcare facilities, [and] other developed properties devoted to non-governmental charitable and institutional uses[.], and any government-owned properties subject to the Charge. The impervious area for these properties includes all buildings, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.
- J. Agricultural property: The impervious area for agricultural properties only includes the houses on those properties.

Section 4. Rates

- A. [Detached single-]Single family residential properties: The Charge for each [detached]single[-] family residential property is based on a percent of the [full applicable]base rate for one ERU[.] in accordance with its assigned tier classification as follows:

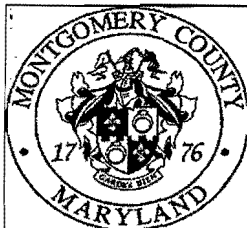


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- [B.] (1) [Attached single] Single[-family] Family [residential] Residential [properties] Tier 1 (SFR1): The Charge for each [attached single-family residential] Single Family Residential Tier 1 property is 33 percent of the applicable base rate for one ERU.
- [C.] (2) Single Family Residential Tier 2 (SFR2): The Charge for each Single Family Residential Tier 2 property is 50 percent of the applicable base rate for one ERU.
- (3) Single Family Residential Tier 3 (SFR3): The Charge for each Single Family Residential Tier 3 property is 100 percent of the applicable base rate for one ERU.
- (4) Single Family Residential Tier 4 (SFR4): The Charge for each Single Family Residential Tier 4 property is 150 percent of the applicable base rate for one ERU.
- (5) Single Family Residential Tier 5 (SFR5): The Charge for each Single Family Residential Tier 5 property is 200 percent of the applicable base rate for one ERU.
- (6) Single Family Residential Tier 6 (SFR6): The Charge for each Single Family Residential Tier 6 property is 250 percent of the applicable base rate for one ERU.
- (7) Single Family Residential Tier 7 (SFR7): The Charge for each Single Family Residential Tier 7 property is 300 percent of the applicable base rate for one ERU.
- B. Multifamily residential properties: The Charge for each multifamily residential property is based on the number of ERUs assigned to the property in accordance with the following procedure:
- (1) The Director determines the number of ERUs for a multifamily residential property by dividing the property's actual impervious area by the designated ERU for Montgomery County.
- (2) The Director computes the billable Charge by multiplying the base rate by the total number of ERUs assigned to the property.
- (3) If the multifamily residential property is a condominium development, the Director calculates the Charge to be billed in equal shares to the owners of the development by dividing the total ERUs calculated for the property by the number of individual condominium units and then multiplying the sum by the base rate to determine the amount billable to each unit owner.



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[D.] C. [Associated nonresidential] Nonresidential properties: The Charge for [the owner of] each [associated] nonresidential property is based on the number of ERUs assigned to the property in accordance with the following procedure:

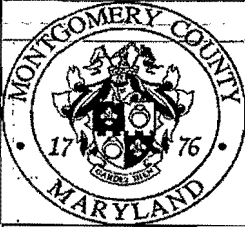
- (1) The Director determines the number of ERUs for a [an associated] nonresidential property by dividing the property's actual impervious area by the designated ERU for Montgomery County.
- (2) The Director computes the billable Charge by multiplying the base rate by the total number of ERUs assigned to the property.
- (3) If the nonresidential property is a condominium development, the Director calculates the Charge to be billed in equal shares to the owners of the development by dividing the total ERUs calculated for the property by the number of individual condominium units and the multiplying the sum by the base rate to determine the amount billable to each unit owner.

D. Agricultural properties: The Charge for each agricultural property is based on a percent of the base rate for one ERU in accordance with the applicable Single Family Residential Tier.

Section 5. Credits

A. The Director must issue a credit to a nonresidential or multifamily residential property owner if the property contains a stormwater management system and the system is maintained in accordance with the maintenance requirements of the Department of Environmental Protection. A property must be credited for treatment of off-site drainage from other properties located within the same drainage area as that property. A property that does not contain a stormwater management system must be credited if located within the same drainage area as another property that contains a stormwater management system if both properties have the same owner. However, a property owner must not receive a credit based on a calculation that exceeds the total impervious area on the property for which the credit is issued. A property owner may receive a maximum credit of 50 percent for a combination of ESD and other stormwater management systems or a maximum credit of 60 percent if the property is completely treated by ESD practices alone. Otherwise, the Director must calculate the credit based on the following criteria:

- (1) 25 percent credit for the treated impervious area if the facility is designed to manage the full water quality volume;
- (2) 25 percent credit for the treated impervious area if the facility is designed to manage the



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full channel protection volume; or

(3) 60 percent if the property is designed to treat the entire ESD volume using ESD practices.

B. The Director must award a maximum credit of 50 percent as specified in the application provided by the Department to the owner of a single family residential property if the property contains a County approved stormwater management system and the system is maintained in accordance with the maintenance requirements of the Department of Environmental Protection.

C. Application Schedule

- (1) To receive the credit, the property owner must submit a request to the Director of Environmental Protection in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due.
- (2) Once approved, the credit is valid for three years. To renew the credit, the Property owner must submit a new request to the Director in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due.

D. Appeals

- (1) If the Director denies the credit, the property owner may seek reconsideration of the Director's decision by submitting a written request for reconsideration with supporting reasons to the Director within 10 days after the date of the Director's written decision.
- (2) If the Director does not approve the request for reconsideration, the property owner may appeal the Director's final decision within 10 days after the Director issues that decision as provided in Chapter 2A, Article I, of the County Code.

Section 6. Billing and Payment

- A. The Director must prepare and forward to the Director of Finance the necessary data for collecting the Water Quality Protection Charge from owners of property subject to the Charge. The data must include the identification of every parcel to be charged and the amount of the Charge.



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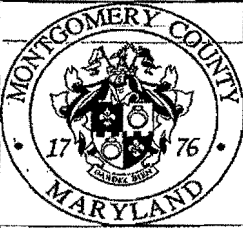
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- B. The Director of Finance must include the Charge as a separate line item on the real estate tax bill for each property subject to the Charge.
- C. The Director of Finance must deposit all payments collected under this Section into a County stormwater management fund.
- D. Interest on any overdue payment accrues according to the same schedule and at the same rate charged for delinquent real property taxes until the owner has remitted the outstanding payment and interest. An unpaid Charge is subject to all penalties and remedies that apply to unpaid real property taxes. [If the unpaid] Any delinquent Charge [becomes] is a lien against the property[;]. [the] The lien has the same priority as a lien imposed for nonpayment of real property taxes. The Charge must be collected in the same manner as real property taxes.

Section [6.] 7. Requests for Adjustment; Appeals

- A. A property owner may request a review and adjustment of the Charge by petitioning the Director in writing[within 21 days after the property owner receives a bill for the Charge], not later than September 30 of the year that payment of the Charge is due if the property owner believes that the Charge has been assigned or calculated incorrectly.
- B. When submitting a petition for review of the Charge, the property owner must include a detailed statement of the basis for the petition and documents supporting the property owner's assertion that the property should be assigned to a different classification, the impervious area measurements used to calculate the ERUs for the property are incorrect, or the property is not subject to the Charge under applicable law.
- C. Within 60 days after receiving the petition, the Director must review the Charge assigned to the property and make a written determination of whether the property owner's request for an adjustment of the Charge should be granted or denied. The Director may request additional information from the property owner that the Director reasonably believes will help the Director decide whether the property owner is entitled to an adjustment.
- D. If the Director concludes that the Charge was levied by mistake or resulted from an inaccurate computation, the Director must submit the corrected data to the Department of Finance with a request for an adjustment to the property owner's bill. After receiving the Director's request, the Director of Finance must make an appropriate adjustment based on the new data submitted by the Director and refund any overpayment to the property owner.



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- E. If the Director concludes that some or all of the requested adjustment should be denied, the property owner may seek reconsideration of the Director's conclusion by submitting a written request for reconsideration with supporting reasons to the Director within 10 days after the date of the Director's written decision.
- F. If the Director does not approve the request for reconsideration, the property owner may appeal the Director's final decision within 10 days after the Director issues that decision as provided in Chapter 2A, Article I, of [Chapter 2A.]the County Code.
- G. The County Board of Appeals is the designated authority charged with hearing and deciding all appeals taken from the Director's final decision to deny any relief requested under this [Section] regulation.

Section 8. Requests for Exemption

- A. Before paying the Charge, the owner of residential property that is owner-occupied, or a non-profit organization that owns property subject to the Charge, may apply for a financial hardship exemption from the Charge by submitting a written request to the Director of Finance in a form prescribed by the Director not later than April 1 of the year when payment of the Charge is due.
- B.
 - (1) To qualify for the exemption, the request submitted by an owner-occupant of residential property must be accompanied by a copy of the owner-occupant's income tax returns indicating that the property owner's gross household income did not exceed 100 percent of the poverty guidelines published by the United States Department of Health and Human Services for the year before payment of the Charge is due.
 - (2) The request submitted by a nonprofit organization must be accompanied by the organization's most recent federal tax return or other verification of total revenues derived from the property for which the exemption is sought, as requested by the Director of Finance. To qualify for the exemption: (i) the amount of the Charge must exceed 0.4% of the organization's total revenues from the property for which the exemption is sought for the year before payment of the Charge is due; and (ii) the property for which the exemption is sought must be exempt from real property *ad valorem* taxation under State law.
- C. The Director of Finance must issue a written decision to grant or deny the exemption within 30 days after receiving the request.



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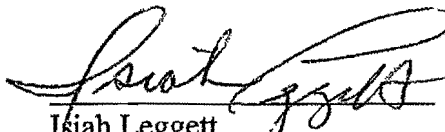
- D. Any exemption granted under this Section is only valid for the year that payment of the Charge is due.
- E. If the Director of Finance denies the exemption, the property owner may seek reconsideration of the Director's decision by submitting a written request for reconsideration with supporting reasons to the Director within 10 days after the date of the Director's written decision.
- F. If the Director of Finance does not approve the request for reconsideration, the property owner may appeal the Director's final decision within 10 days after the Director issues that decision as provided in Chapter 2A, Article I, of the County Code.

Section [2.] 9. Severability

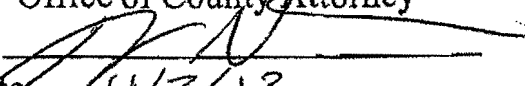
If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

Section [3.] 10. Effective Date

This regulation takes effect upon approval by the County Council.


Isiah Leggett
County Executive

Approved as to Form and Legality
Office of County Attorney

By 
Date 4/3/13
Walter E. Wilson

| JURISDICTION | STATUS | FEE | EXEMPTIONS | CREDITS | HARDSHIP | CAPS | GRANTS | REVENUE ESTIMATE |
|----------------|--|---|--|---|---|--|--|--------------------------|
| Anne Arundel | amended Bill 2-13, introduced on 1/22/13, heard on 2/16/13, final vote scheduled for 4/15/13 http://www.aacounty.org/CountyCouncil/Resources/2013/2-13.pdf | \$34 for townhouses, mobile homes, and condominiums (R10, R15, R22 zones); \$85 for single family homes (R2 and R5 zones), private roads; \$170 for rural agricultural (RA, RLD, R1 zones); nonresidential and multifamily charged based on impervious surface \$1 for religious groups | those in state law; unimproved property | requires Administration to adopt regulations and must include credit for properties with NPDES permits that include stormwater management; for adding stormwater management facilities; and marinas with DNR "clean marina" status | residences where the owners and occupants meet specified criteria; mobile home tenants; (nothing for non-residential) | fees over \$500 phased in: 60% in 2014, 100% thereafter; HOA fee capped based on a formula; nonresidential fee capped at 35% of property tax (before property tax credits, deferrals, etc.); caps for farms, marinas, airports, private schools, properties with NPDES permits | grants on a competitive basis to non-profit organizations including homeowners associations, to execute stormwater management projects | \$20 million |
| Baltimore City | Council Bill 12-0155 was heard by committee on 4/2/13; another hearing is scheduled for 4/17/13 http://legistar.baltimorecitycouncil.com/attachments/9843.pdf | Board of Estimates to establish a fee schedule news stories suggest fee will range from \$48 to \$144 for residential and \$72 per 1,050 square feet of impervious area would be charged annually for all other properties | Director of DPW to establish by regulation | to be adopted by administrative regulations that provide credits for: (1) specific actions that reduce the quantity or improve the quality of stormwater discharged from the property; and (2) specific actions that improve the quality of stormwater discharged to the city's stormwater system | to be adopted by administrative regulations that provide exemptions for property able to demonstrate substantial financial hardship as a result of the stormwater remediation fee | | | no information available |

| JURISDICTION | STATUS | FEE | EXEMPTIONS | CREDITS | HARDSHIP | CAPS | GRANTS | REVENUE ESTIMATE |
|------------------|---|--|---|---|---|------|--------|------------------|
| Baltimore County | Council Bill 20-13, worksession 4/9/13 http://resources.baltimorecountymd.gov/Documents/CountyCouncil/bills%202013/b02013.pdf | set by Executive Order, draft unapproved order shows an ERU of 2000 square feet with (1) a base rate of \$36 per ERU, for: (i) residential, not condominium or cooperative, single-family residential properties; or (ii) non-residential, institutional, which is real property owned by a non-profit entity; (2) \$29 per dwelling unit in a residential, condominium or cooperative ownership dwelling; and (3) \$69 per ERU for non-residential, non-institutional properties. | set by Executive order, draft unapproved order shows exemptions for unimproved property, agriculture, | set by Executive Order, draft unapproved order shows credits for a variety of specified BMPs. Credits capped at 74% of fee. | set by Executive Order, draft unapproved order shows exemption for residences where the owners and occupants meet specified criteria. (nothing for non-residential) | | | \$23.5 million |
| Carroll County | Carroll has an advisory group to figure out how to proceed | | | | | | | |

| JURISDICTION | STATUS | FEE | EXEMPTIONS | CREDITS | HARDSHIP | CAPS | GRANTS | REVENUE ESTIMATE |
|------------------|---|---|--------------------------|---|--------------------------|--------------------------|--------------------------|--------------------------|
| Charles County | no bill | staff expects to introduce a bill that will establish an ERU at 3,255 sq. feet, with a fee of \$32 per ERU. For residential properties, single-family detached in zones RH, RM, RL, RV, and RR will be 1 ERU; single-family detached in zones AC, RC, and RC(D) will be 2 ERUs. Town houses will be assigned .5 ERU, condos at .33 ERU, and all agriculturally assessed properties at 2 ERUs. Non-residential properties will be calculated on an individual basis based on actual impervious surface area. | no information available | no information available, but staff expects to include credits for agriculture and stormwater management facilities | no information available | no information available | no information available | no information available |
| Frederick County | County Commissioners directed staff to proceed with a stormwater utility fee of 1 cent per property. The public hearing has not yet been scheduled. | | | | | | | no information available |

| JURISDICTION | STATUS | FEE | EXEMPTIONS | CREDITS | HARDSHIP | CAPS | GRANTS | REVENUE ESTIMATE |
|----------------|--|---|---|---|---|---|--|------------------|
| Harford County | Bill 13-12, public hearing 3/19/13 and 4/2/13, vote may occur 4/16/13 http://www.harfordcountymd.gov/council/index.cfm?ID=882 | flat fee of \$125 for improved property zoned residential (except for apartment buildings) or agricultural. \$7 per impervious unit (500 sq. ft.) for any business, commercial or industrial-zoned property, any apartment building, mobile home park, maritime facility, property owned by a fraternal organization or religious institution, or health care facility. | property owned by the state, a unit of state government, a county, a municipality or a regularly organized volunteer fire department that is used for public purposes; property located within the municipal boundaries of an incorporated town or city; unimproved property; a property able to demonstrate substantial financial hardship as a result of the imposition of the fee. | Administrative regulations to implement credit program of up to 50% to account for on-site and off-site systems, facilities, services and activities that reduce the quantity or improve the quality of stormwater discharged from a property | Administrative regulations must provide that a property able to demonstrate substantial financial hardship as a result of the imposition of the fee. Limited to dwellings with at least one owner who meets one of several poverty criteria | an amendment would cap fee for 501(c)(3) entities at \$250. | | \$10 million |
| Howard County | CB8-2013 and CR21-2013 enacted http://cc.howardcountymd.gov/displayprimary.aspx?id=4294968832 | \$15 per unit of imperviousness (500 sq. ft.); special formula for agricultural properties | those exempted by the state | up to 50% for various BMPs; properties with specified federal permits covering stormwater management | owners of residential property that meet certain criteria related to poverty; owners of non-residential property that meet criteria set by administrative regulation | | nonprofits may receive grant to build facilities; others may be reimbursed according to specified schedule | \$17 million |

| JURISDICTION | STATUS | FEE | EXEMPTIONS | CREDITS | HARDSHIP | CAPS | GRANTS | REVENUE ESTIMATE |
|------------------------|--|---|---|---|--|------|---|------------------|
| Montgomery County | amended Bill 34-12, Council action rescheduled for 4/16/13 http://www6.montgomerycountymd.gov/content/council/pdf/agenda/cm/2013/130311/20130311_TE1.pdf | fee for residential properties will be based on a seven-tiered system determined by the amount of impervious surface on the lot, fee will range from \$33.76 for a Tier I property through \$170.84 for a Tier VII property; non-residential property will be charged based on the impervious area (in 2,046 sq. ft. units); 5 year phase-in likely | severe financial hardship (limited to residential and non-profit property owners), which would be defined by administrative regulations; properties in Rockville or Takoma Park; impervious area for agricultural properties only includes the houses on those properties | to be developed by Administrative regulations for installation of various stormwater management elements, up to 60% for using the most advanced ESD | to be developed by Administrative regulations, draft regulations show exemption for residences owned by the impoverished and properties owned by low-income nonprofits | | loans and grants for non-profit organizations to perform activities that would qualify them for credits | \$22,345,931 |
| Prince George's County | no bill, workgroup established, legislation is expected soon; note: County already has a Stormwater Management District applicable to the whole county (outside the City of Bowie) funded by a stormwater management ad valorem tax on all property assessed for tax purposes within the District that receives stormwater management services, as well as by fee-in-lieu payments, state grants and low interest loans for flood control and water quality initiatives, and stormwater bonds, but County estimates it will need about 8 times the revenues currently collected. | | | | | | | |

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Center Maryland



Walt Townshend: The Nearly-Stealth Fee That Needs to Be Delayed and Rethought

By H. Walter Townshend

Come the first week of July for many Marylanders, the annual tax bill will arrive with an added line: “stormwater management” or “impervious surfaces” fee. For residential property owners, the fee will be an irritant, but manageable, on the order of \$35 to \$200, depending on whether it’s a condo/townhome, single family house or larger residential/agricultural property.

However, for non-residential properties, including those currently exempt from property taxes such as private schools, non-profits and churches, the fee will likely be a huge shock, ranging from \$600 to nearly \$3,000 per acre of impervious surfaces, under current legislative proposals.

For some major employers in Maryland, the fee will exceed \$300,000; for a parochial school it may mean \$6,000. A golf course may have a fee of nearly \$7,000 for the golf cart paths alone. Another irony is that for some property owners, the impervious surfaces fee will exceed the property tax bill.

If you are not familiar with an “impervious surface” or the fact that you may soon be paying for having some, a nearly stealth mandate is coming to 10 jurisdictions in Maryland: Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery and Prince George’s Counties and Baltimore City. Why these 10?

In the 2012 Session of the Maryland General Assembly, HB 987 was enacted, mandating that these jurisdictions—holding a Phase One Municipal Separate Storm Sewer System (MS4) Clean Water Permit issued by the Maryland Department of the Environment— adopt and implement a local watershed protection and restoration fund program. In addition, they were to develop a stormwater remediation fee. The programs and fees are to be in place by July 1, 2013.

The fee applies to all property owners except for property used for a public purpose and owned by the State, a unit of the State, a county, a municipality or a regularly organized volunteer fire department. Further, the fee is separate from any charges established for new development, to include plan review, permits, inspections, etc. Municipalities within the counties may develop their own programs and fee, or elect to follow those set by the County.

Currently, four of the ten jurisdictions have proposed legislation being considered. It remains unclear as to when the others will bring forward proposals, but the July 1 deadline draws ever closer.

So, just what is an impervious surface? It is generally defined as a surface that does not allow stormwater to infiltrate into the ground, which includes buildings, sidewalks, driveways, parking lots, patios and even swimming pools.

How does one determine how much impervious surface is on a property? Technology has provided satellite imagery and Geographic Information Systems (GIS) software that allow technicians to define and measure these surfaces without setting foot on the property, displaying the parcels' impervious features with color coded designations.

How can a property owner see these GIS images being used to determine the fee? There's the rub, as only one jurisdiction, Anne Arundel, has an online Watershed Mapping Application that can be accessed by the public, as long as you know how to use GIS protocols. When asked how owners can understand the impact, some county officials have responded with a variation of the Pelosi Principle: "We have to enact the impervious surfaces legislation in order for you to know the impact of the legislation." In short, after the legislation is passed, the plan is to "educate" owners about the impervious surfaces and the fees they will have to pay. Surely every property owner has the right to know the amount of impervious surface on property before any legislation is passed.

Are there offsetting credits that can reduce the fees an owner must pay? In most jurisdictions, credits of up to 50 percent of the total fee are being proposed. Credits are dependent on the existing and operational stormwater management systems that reduce the amount of, or improve the quality of, stormwater from the property's impervious surfaces. Why 50 percent and not 60 or 70 or even 80 percent? No one can clearly provide an answer, but HB 987 is silent on the amount of credit that may be allowed. Owners holding a National Pollutant Discharge Elimination System (NPDES) permit are truly baffled, arguing that they are paying twice for the systems they already have in place. One permit holder shared that the annual maintenance of existing systems approaches \$200,000, and questioned why they should be charged another \$80,000 annually as a fee.

It is also incumbent on the property owner to apply for the credits. Most legislation does not include the requirements for application for credit, criteria for determination, deadlines, etc., stating that these processes will be determined by departmental "regulation." It is conceivable that credit applications could require certification by a licensed professional engineer, adding further to the economic burden. Should not these regulations be available for review before any legislation is passed?

What if a property owner has an economic hardship? HB 987 mandates that there be provisions for such hardships, but some legislative proposals provide them only to residential property owners, and not to non-residential owners. Why?

As the impacted jurisdictions are dealing with the mandate—some happily so—legislation is being considered in the current session of the General Assembly to include state properties (with some exceptions) as well as to exempt Frederick County from the list. On the federal level, Virginia's Attorney General just won his case on this very issue regarding stormwater in Fairfax County, with the court's ruling that "...storm water runoff is not a pollutant, so EPA is not authorized to regulate it."

A recent decision by the United States Court of Federal Claims in Georgia held that the stormwater management charges assessed by DeKalb County, Georgia were taxes. "The charges are set by the County's legislative body, they are imposed on every owner of developed property in the unincorporated portion of the county, and they are used to provide benefits that are enjoyed by the public as a whole," the Court stated.

If such a ruling applies to Maryland, it could present a significant problem for those jurisdictions with tax caps. Indeed the fiscal and policy note for HB 987, prepared by Maryland's Department of Legislative Services, telegraphed as much: "In jurisdictions that have a charter limit on their property taxes, establishing a stormwater remediation fee may necessitate an offsetting reduction in some other property tax, to the extent the fees established under the bill are considered property taxes."

No one disputes the need to protect the health of the largest estuary in America and its tributaries, but the proposed legislation in some jurisdictions, the lack of legislation in others, and the multitude of questions surrounding all the proposals call for the Maryland General Assembly to delay implementation of these programs for one year, until July 1, 2014.

This will allow property owners the right to learn the amount of impervious surfaces on properties via a publically accessible means, for regulations to be developed and reviewed by impacted parties, and hopefully a shared vision of what is needed, regionally, to most efficiently and reasonably deal with the challenges of stormwater. Most importantly, this time will allow the state and its jurisdictions to have a better understanding of how best to reduce impacts of stormwater runoff without individual jurisdictions wasting precious resources by hastily formulating stormwater remediation programs and fees.

A final example of the confusion and disparity that exists is this. The Navy Marine Corps Stadium in Annapolis is owned by the Naval Academy Athletic Association, a non-profit organization and therefore subject to the impervious surfaces fee being considered by Anne Arundel County. Because it is in the municipality, exempted from HB 987 and able to establish its own fee, the Association would pay \$500 annually, as Annapolis' charge for properties with 10,000 square feet or more of impervious surface is a flat fee of \$500. Move that same stadium into Anne Arundel County, and the fee would approach \$40,000.

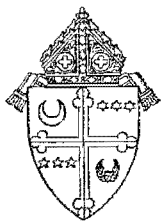
Let's not be impervious to transparency and to reason. We need to rethink the elements and impacts of this economic game-changer. Please, delay the mandate deadline for one year, to July 1, 2014.

H. Walter Townshend is President & CEO of the Baltimore Washington Corridor Chamber, a regional business association serving corporations, non-profits and institutional members.

This entry was posted on Thursday, March 14th, 2013 at 1:00 am. You can follow any responses to this entry through the [RSS 2.0](#) feed. Both comments and pings are currently closed.

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ARCHDIOCESE OF WASHINGTON

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March 13, 2013

Council Members
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RECEIVED
MONTGOMERY COUNTY
2013 MAR 13 PM 2:34

Re: BILL 34-12 Storm Water Management – Water Quality Protection Charge

Dear Council Members:

On behalf of the Roman Catholic Archdiocese of Washington, I am writing to you regarding Bill 34-12, a bill that would implement a state mandate enacted in 2012 by the Maryland General Assembly for local subdivisions to adopt measures to improve the water quality of the Chesapeake Bay. This bill would impose a “Water Quality Protection Charge” (“WPQC”) on all non-residential properties in the County, commencing July 1, 2013.

The Archdiocese supports the environmental objective of improving the water quality of our community’s watershed and wishes, as it is able, to contribute a fair share to mitigation efforts. Nonetheless, as an owner of many religious institutional properties in the County, the Archdiocese has concerns about the implications of this legislation and accompanying regulations for its operations.

The Archdiocese’s properties in Montgomery County represent a variety of uses. Among them are 36 parishes that include places of worship, educational facilities, convents and residences for clergy, soup kitchens, community health clinics, food pantries, and other parish-based outreach ministries. There are 39 Catholic elementary and secondary schools that enroll 11,880 students, at an estimated annual savings of \$168 million to Montgomery County. The Archdiocese has 16 affordable housing properties that provide independent and assisted living communities for low and moderate income seniors and affordable workforce rental housing for families. Finally, the Archdiocese has properties that provide an array of social services, including medical and dental clinics for uninsured, low-income adults and children, shelter services, emergency assistance, job training, English language classes, programs for persons with developmental disabilities, and many other programs and services for those in need in the County.

These good works undertaken through our ministries of education, health care and social service, such as Catholic Charities, the Spanish Catholic Center, and Victory Housing, as well as through our parishes, provide vital and essential services to our citizens regardless of their

religion. Thus it is fair to say that the Archdiocese is deeply rooted in Montgomery County and invested in the common good.

Many of our properties in the County are large institutional structures with sizeable parking lots. Many are older buildings, built well before modern storm water management techniques were put in place. In addition, many of our parishes and parochial schools have tight operating budgets, budgets which are not able to absorb new, unanticipated fees or taxes, especially on a few months' notice. As yet, we have not learned how much this WPQC will be on each of our properties, but the estimate for one of our parishes, St. Camillus, is nearly \$15,000 annually at full implementation.

In addition to the amount of this new fee applied to all our properties not previously subject to the charge, it is our understanding that the WPQC is intended not only to charge property owners for the "untreated" drainage volumes from their own properties but also to fund storm water mitigation efforts for County buildings and uses, including public schools. This methodology will have, it seems to me, the inequitable effect of making our Catholic schools, which save the County millions of dollars each year in per pupil spending, pay fees to a fund that will be used, at least in part, to mitigate runoff from public schools that are themselves exempt from this WPQC. Furthermore, these Catholic schools will have to generate their own funds to construct and maintain storm water projects necessary to earn credits against the assessed fees.

Given our demonstrated relationship with Montgomery County, the Archdiocese is hopeful that in its final form this ordinance, and its accompanying regulations, will provide needed relief to the Archdiocese to soften the economic impact on its properties, particularly its parishes and schools, some of which would feel the costs created by this legislation more than others, and that the legislation will share the costs of the mitigation efforts more equitably.

It is clear that the state law contemplates various means to balance the equities available to property owners through implementation of a fair local ordinance. For example, exemptions for any property that can demonstrate substantial hardship resulting from fees imposed are mandated by state law. Under the state law, counties "may establish a separate hardship exemption program or include a hardship exemption as part of a system of offsets" once again, to provide economic relief to properties subject to burdensome fees. Finally, the state law mandates that the counties establish policies and procedures "to reduce any portion of a storm water remediation fee to account for on-site and off-site systems, facilities, services or activities that reduce the quantity or improve the quality of storm water discharge from the property."

There are a variety of ways, I believe, to lessen the economic impact on our properties and other religious institutions and nonprofits that are similarly situated. You may wish to give consideration to a possible rate structure that treats institutional, nonprofit properties separately from general commercial or industrial properties. Perhaps there could be a separate tier for religious use, either by way of a percentage reduction to the "regular" rate, justified on the basis

Council Members
Montgomery County Council
March 13, 2013
Page 3

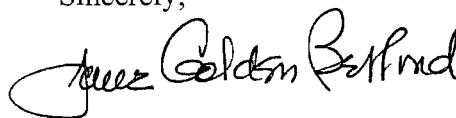
of the community contributions of these nonprofit institutions. A delayed start to the imposition of the fee, or a longer phase-in of the fees would help in adjusting budgets. The County itself could contribute from the general fund to the Bay restoration fund so that County taxpayers as a whole, and not just property owners, particularly religious institutions, bear the costs of mitigating the effects from County facilities.

Loans to promote property mitigation efforts and the availability of grant monies to non-profit organizations to promote the development and implementation of sound storm water management practices on a property by property basis would be welcomed. Meaningful credits, beyond the 50%/60% limit in the Bill, ones that are reasonably easy to seek (that is, which do not require engineering consultants to assist owners in applying) should be available. With these tools, institutional owners can have the option of installing storm water management facilities in lieu of the annual charge. An increase in the credit percentage beyond 50%/60% seems particularly compelling given that the property owner who constructs a storm water project will be required to assume the maintenance responsibilities and costs in perpetuity.

At this stage, there are many unknown factors that make close analysis of the issues presented in the Bill difficult to ascertain. The amount of the fee and how it will be charged against nonresidential properties and the determination of our properties' impervious areas are not yet understood. The Archdiocese will be working with the County DEP, as it has offered, to understand the magnitude of this new charge on all our properties. At this point, however, we have only to speculate as to the specific dollar impact of implementation of the ordinance before you. That there is so much unknown about the economic impact of implementation is in itself disturbing and unsettling. We trust that you will be afforded vital cost information and other data before you move forward with this ordinance.

Thank you for your willingness to hear our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Golden Belford". The signature is fluid and cursive, with the first name "Jane" being more prominent.

Jane Golden Belford
Chancellor

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DIRECT DIAL: (301) 347-1229
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March 26, 2013

Re: Bill 34-12

Dear Councilmember:

We are writing on behalf of the Roman Catholic Archdiocese of Washington.

Kindly find enclosed a Memorandum setting forth observations and proposed solutions to concerns recently expressed by the Department of Environmental Protection (DEP) Staff, the Council and its Staff, the Executive Staff and the Archdiocese regarding implementation of Bill 34-12.

Our clients views have evolved over the recent past and our suggested course of action for the Council is we trust a measured, workable and responsible solution to issues raised during our conversation regarding the proposed ordinance.

We recommend the attached Memorandum for your consideration and we stand prepared to respond to inquiries and suggestions.

Respectfully,



Devin J. Doolan





Elsie L. Reid

DJD:sll
Enclosure

MEMORANDUM

TO: County Council
Department of Environmental Protection

FROM:  Devin John Doolan and Elsie L. Reid 

DATE: March 26, 2013

RE: Bill 34-12 and Proposed Executive Regulations

As you know we have presented our concerns about the imposition of a Water Quality Protection Charge on the church properties of the Archdiocese of Washington, properties that serve the local community as places of worship, education and social services to persons in need regardless of their faith background. One of the ways suggested to address our concerns has been focused on defining "substantial financial hardship" so that a non-profit institution or religious association might apply to DEP for exemption from the WQPC.

Frankly, creating such a definition of "hardship" and applying it to non-profits and religious associations is challenging and problematic for a number of reasons, not the least of which is the level of discretion being delegated to an administrative body and the administrative burden on DEP to administer such an exemption program in a fair and consistent way. We believe it a far simpler and sounder approach to classify religious organizations separately and to set the rate of the WQPC at a low rate or cap it in such a way as not to overly burden institutions which do so many good works in the County.

Discussion of Hardship Exemption:

If the approach is to apply a "hardship" exemption, one needs first to define what types of non-profit institutions, if not all, the County would like to make eligible for exemption. Some of the non-profit associations in our area are not charitable associations; rather they can be membership organizations or trade associations. The County could choose to allow all non-

profits to apply for exemption or limit the exemption to those not for profit organizations qualified as "charitable" organizations under Section 501(c)(3) of the Internal Revenue Code.¹

To restrict the exemption further, the organization could be required to show, by its governing documents, budget or similar documentation, that it either provides social services to the poor, the distress or the underprivileged within Montgomery County; is a religious association whose civic contribution to the public good can be assumed; or is a private school educational institution that serves County residents. There may be other types of non-profits whom the County would deem eligible for exemption.

The next concern would be defining what is meant by "substantial financial hardship". This exercise would entail investigation into the finances, budgeting process, and programmatic choices of the property owner seeking an exemption. There could of course be some presumed factor, such as the WQPC being more than a percentage of operating expenses for the organization, but we have had insufficient time to think about the fairness or reliability of using such criterion as a measuring stick.

And, a real difficulty comes in applying hardship criteria to religious associations. Such a process would necessarily involve the County in reviewing the finances and budgetary choices of religious associations and making judgments as to what is a financial hardship for a community of faith. DEP would be forced to determine whether payment of the WQPC should take precedence over expenditures to remove asbestos from an aging school building, pay clerical staff, or fund food kitchens or health clinics. These concerns are troublesome. In most religious organizations, which depend either on membership dues or in our experience mostly upon voluntary collections ("money put in the offering plate each week"), choices between expenditures for worship, mission, and religious education are often difficult. The more the government exacts in the way of "fees" or "taxes" the less funding there is for the mission of these religious bodies and their "good works."

¹ As summarized on the IRS website: To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

Alternative Proposal: Classifying religious organizations separately with a lower or capped fee

For these reasons, we propose as a far better alternative approach that “religious associations” be treated not on the basis of individual applications for “hardship” exemptions but that they be presumed to be worthy of special status and treated in a separate category for taxation purposes. Such a policy choice can be justified on the basis of the many contributions religious associations make to the public good.

Such an approach is also consistent with state law and County practice. Maryland has long exempted religious associations from the payment of real estate taxes so long as their properties are places of public worship, parsonages or educational facilities. MD. Tax-Prop. Art. Sec. 7-204 (2012 Repl. Vol.).² In other words, the State has affirmed the public value of these organizations and has afforded them a full tax exemption. Accordingly, it would seem appropriate, and totally consistent with Maryland precedent and constitutional law³, for the County to treat religious associations separately for purposes of imposing a rate or tier of fees for the “Water Quality Protection Charge (“WQPC”).

There are substantial benefits to this approach. First it avoids the invasive and perhaps questionable constitutional practice of having a governmental agency review the financial status of a religious organization to determine its “hardship” status. One of the reasons the special exception process in our County exempts church schools is to avoid the entanglement of government reviewing the operational characteristics, staffing and programs of parochial schools. Reviewing budgets to ascertain hardship risks the same entanglement.

Second, an approach which assumes that religious associations are entitled to a reduced rate would reflect the value to the county these associations provide. The Archdiocese as you know educates thousands of County children, saving the taxpayer an estimated \$185 Million annually, and provides a wide array of social services, from soup kitchens to free or subsidized medical and dental care for the needy as well as affordable housing for the frail and elderly poor. As we have pointed out earlier, this approach also avoids putting church properties in the position of being taxed to pay part of the cost of remediating runoff from public buildings, such as public schools.

Third, such an approach would allow places of worship to budget reliably as to their fee obligations and to contribute in a non-burdensome way to the environmental goals of the WQPC

² This statutory exemption for religious organizations was upheld against constitutional challenge in Murray v. Comptroller of Treas. 241 MD. 383, 216 A.2d 897, cert. denied, 385 U.S. 816 (1966).

³ A concern was raised at the Council discussion of this Bill as to whether providing preferential treatment for religious associations would be constitutional, or in other words might offend the First Amendment to the US Constitution as being an “establishment of religion.” In our view, this concern is easily addressed. First of all, the State Property Tax Code already treats religious organizations separately and has, as cited above, withstood constitutional challenge. Because the exemption is not reserved to anyone particular religious association, there is no establishment of religion. Further, Montgomery County has long given special treatment to religious schools, for example, in the land use arena, where a special exception is not required for such schools whereas non-sectarian schools are required to have one. This practice was upheld in the case of Ehlers-Renzi v. Connelly Sch. of the Holy Child, Inc., 224 F.3d 283, cert. denied, 531 U.S. 1192 (2001).

program. Churches within the Archdiocese may also choose to pursue their own remediation efforts based on public education and support received from DEP.

This approach is to our knowledge being considered in other counties. For example, in Anne Arundel County a bill (Bill 2-13), as amended, is expected to be adopted next week where the fee for religious organizations will be capped at twice the residential rate. The bill defines religious organizations as a separate category of nonresidential property owners and caps the fee to be charged them. Specifically, the Bill reads in pertinent part:

Religious Facilities—fee. If a nonresidential property is owned by a religious group or organization the stormwater remediation fee shall not exceed two times the Base rate.⁴

This approach can be made part of Montgomery County's scheme by amending the proposed Regulations, in Sections 3 and 4, to create a separate class for "religious groups or associations" and then setting either a flat fixed rate or a capped rate as a multiple of the ERU standard rate.

In summary, religious groups contribute significantly to the common good in Montgomery County and deserve special treatment in the exaction of new taxes or fees. Moreover, while there may be some temples, synagogues and churches in our County that are large with a stable financial base; many others are small, struggling to maintain sufficient finances to retain clerical staff, take care of their properties, keep their schools open, and fulfill their mission of worship, religious education, and outreach. Some are part of larger denominations but even these usually support the larger governing body rather than receive financial support from the denomination. Many church properties are older properties on lots with considerable impervious surfaces but which have neither sufficient land nor financial resources for installing "retrofits" to current best practices. Forcing these organizations to bear a new tax burden that in some cases is estimated to be in the thousands of dollars annually will be burdensome and will come at the cost of sacrificing other needs and services to the County.

For all these reasons, we believe that the County should consider a reduced rate or cap at some small multiple of the Equivalent Residential Rate for church properties.⁵ Doing so will keep the County from becoming entangled, at the risk of constitutional implications, in determining "hardship" for a religious group and be a simpler administrative process. There is statutory precedent for classifying church properties differently for taxation purposes and it makes for good and equitable public policy.

⁴ For purposes of the Anne Arundel Bill, "religious group or organization" means a religious organization that is certified under Sec. 501(C)(3) or (D) of the Internal Revenue Code. (Sec. 13-7-101(11)). The Base Rate is \$85, so that the "church" rate would be \$170 per year.

⁵ The rate could be capped in tiers for the size of "church facilities" so that a distinction might be made between really large churches whose imperviousness was greater than some large multiple (say 30, e.g.) of equivalent residential units and smaller church properties. Distinctions among church facilities could, in other words, be made based on their runoff.

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 2, 2013

The Honorable Edward R. Reilly
Senate of Maryland
James Senate Office Building, Room 321
Annapolis, Maryland 21401

Re: Proposed Anne Arundel County Council Bill 2-13, "Stormwater Management – Watershed Protection and Restoration Special Revenue Fund and Program"

Dear Senator Reilly:

Attorney General Gansler has asked me to respond to your recent inquiry regarding Anne Arundel County Council Bill 2-13, which is entitled "Stormwater Management – Watershed Protection and Restoration Special Revenue Fund and Program." As you know, the Office of the Attorney General does not ordinarily opine on local legislation. Because your specific question asks whether the county's proposed action is acceptable under the governing *State* law, however, it falls within an exception to that general rule.

During the 2012 legislative session, the General Assembly adopted legislation requiring certain local jurisdictions to adopt and implement a watershed protection and restoration program. Ch. 151 of 2012 *codified as* Md. Envir. ("EN") Ann. Code, §4 202.1. The law requires these local jurisdictions to "establish and annually collect a stormwater remediation fee from owners of property located within the county or municipality." EN §4-202(e)(1). The State law, however, gives the local governments some flexibility in determining how to compute that fee:

- (3) (i) A county or municipality shall set a stormwater remediation fee for property in an amount that is based on the share of stormwater management services related to the property and provided by the county or municipality.

The Honorable Edward R. Reilly
April 2, 2013
Page 2

- (ii) A county or municipality may set a stormwater remediation fee under this paragraph based on:
 - 1. A flat rate;
 - 2. An amount that is graduated, based on the amount of impervious surface on each property; or
 - 3. Another method of calculation selected by the county or municipality.

EN §4-202.1(e)(3).¹

There is an apparent tension between the two provisions. Subsection (3)(i) requires that the local government set the fee based on the share of stormwater management services that the property causes to be expended. Subsection (3)(ii), however, obviously contemplates substantial variation from exact cost. I believe that the appropriate method of statutory interpretation requires us to read the provision as a whole and, to the extent possible, to harmonize its parts. Doing so, I believe that the local governments have considerable latitude in determining the fees but that the fees must be fair and bear a rational relationship to the stormwater services that such a property requires the local government to expend.

With that framework in mind, I now turn to the Anne Arundel County proposal. Council Bill 2-13 sets a base rate for "one equivalent residential unit" at \$85 per year. Council Bill 2-13 at page 4, line 38. Different sizes and uses of property are charged in fractions or multiples of this "equivalent residential unit." Council Bill 2-13 at page 4, line 40 through page 5, line 25. The amendments that you forwarded to my attention (1) define a "religious group or organization" and (2) cap the stormwater remediation fees that such an entity must pay for nonresidential property at "two times the base rate." This fee structure satisfies the test that I have laid out in that it is fair to property owners

¹ The State law also requires the local government to establish a system by which a property owner can apply for a reduction in the fee based on the property owner's other stormwater management activities. EN §4-202.1(f).

The Honorable Edward R. Reilly

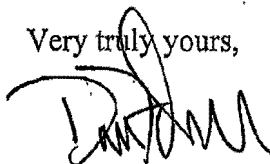
April 2, 2013

Page 3

and bears a rational relationship to the stormwater services that a property of this type requires the local government to expend.²

I hope that this analysis assists you.

Very truly yours,



Dan Friedman

Counsel to the General Assembly

² Although it is beyond the scope of your inquiry, it is my view that a cap on stormwater remediation fees paid by a "religious group or organization" does not violate the First Amendment to the United States Constitution. *See, e.g., Walz v. Tax Comm'n*, 397 U.S. 664 (1970) (religious exemption from property tax does not violate establishment clause of the First Amendment).

Residential Hardship Criteria

- 170% Federal Poverty level (Using Maryland Energy Assistance Program standards)
- Assumes 75% participation
- Approximately \$500,000 in revenue shift

Non-profit Hardship Criteria

- Maximum charge of 0.3% gross revenue
 - Approximate equivalent of residential hardship
- Approximately 35 million square feet of impervious owned by potentially eligible non-profits
- Approximately \$200,000 revenue shift in FY14
- Assumes 50% eligibility

Non-profit FY14 Charge Distribution

| Impervious Area | # of Properties | Cum. % | Charge at \$86.90 |
|---------------------------|-----------------|--------|--------------------------|
| >0 and <=10,000 sf | 235 | 31% | >\$0 and <=\$361 |
| >10,000 and <=20,000 sf | 120 | 47% | >\$361 and <=\$722 |
| >20,000 and <=30,000 sf | 77 | 57% | >\$722 and <=\$1,084 |
| >30,000 and <=40,000 sf | 59 | 64% | >\$1,084 and <=\$1,445 |
| >40,000 and <=50,000 sf | 53 | 71% | >\$1,445 and <=\$1,806 |
| >50,000 and <=60,000 sf | 58 | 79% | >\$1,806 and <=\$2,167 |
| >60,000 and <=70,000 sf | 22 | 82% | >\$2,167 and <=\$2,528 |
| >70,000 and <=80,000 sf | 28 | 86% | >\$2,528 and <=\$2,889 |
| >80,000 and <=90,000 sf | 11 | 87% | >\$2,889 and <=\$3,251 |
| >90,000 and <=100,000 sf | 20 | 90% | >\$3,251 and <=\$3,612 |
| >100,000 and <=150,000 sf | 34 | 94% | >\$3,612 and <=\$5,418 |
| >150,000 and <=200,000 sf | 18 | 96% | >\$5,418 and <=\$7,224 |
| >200,000 and <=250,000 sf | 10 | 98% | >\$7,224 and <=\$9,030 |
| >250,000 and <=300,000 sf | 4 | 98% | >\$9,030 and <=\$10,835 |
| >300,000 and <=350,000 sf | 2 | 99% | >\$10,835 and <=\$12,641 |
| >350,000 and <=400,000 sf | 1 | 99% | >\$12,641 and <=\$14,447 |
| >400,000 and <=450,000 sf | 2 | 99% | >\$14,447 and <=\$16,253 |
| >450,000 and <=500,000 sf | 5 | 100% | >\$16,253 and <=\$18,059 |
| >500,000 and <=550,000 sf | 2 | 100% | >\$18,059 and <=\$19,865 |
| >550,000 and <=600,000 sf | 0 | 100% | >\$19,865 and <=\$21,671 |
| >600,000 and <=650,000 sf | 1 | 100% | >\$21,671 and <=\$23,477 |

Residential Tiers

| | Charge | # of Properties ⁽¹⁾ | % of Properties ⁽²⁾ |
|--------------------------------------|----------|--------------------------------|--------------------------------|
| Tier 1 ($\leq 1,000$) | \$28.68 | 40,278 | 19% |
| Tier 2 ($>1,000$ and $\leq 1,410$) | \$43.45 | 18,431 | 9% |
| Tier 3 ($>1,410$ and $\leq 3,412$) | \$86.90 | 106,402 | 51% |
| Tier 4 ($>3,412$ and $\leq 3,810$) | \$130.35 | 8,114 | 4% |
| Tier 5 ($>3,810$ and $\leq 5,815$) | \$173.80 | 18,238 | 9% |
| Tier 6 ($>5,815$ and $\leq 6,215$) | \$217.25 | 1,841 | 1% |
| Tier 7 ($>6,215$) | \$260.70 | 14,174 | 7% |

⁽¹⁾ # of properties at the end of the phase-in

⁽²⁾ At the end of the 3 year phase-in, the pay less/more distribution becomes 80/20

Pay More vs. Less in FY 2014

| | |
|------------------------|--|
| Residential | <ul style="list-style-type: none">➤ 187,404 Pay Less (90%)➤ 20,074 Pay More (10%) |
| Non-Residential | <ul style="list-style-type: none">➤ 2,430 Pay Less (30%)➤ 6,090 Pay More (70%) |

Typical Home in Tier 1



| | |
|----------------------|---------|
| Impervious Area (sf) | 867 |
| FY 13 Charge: | \$92.60 |
| FY 14 Charge: | \$28.68 |
| Savings: | \$63.92 |

Typical Home in Tier 2



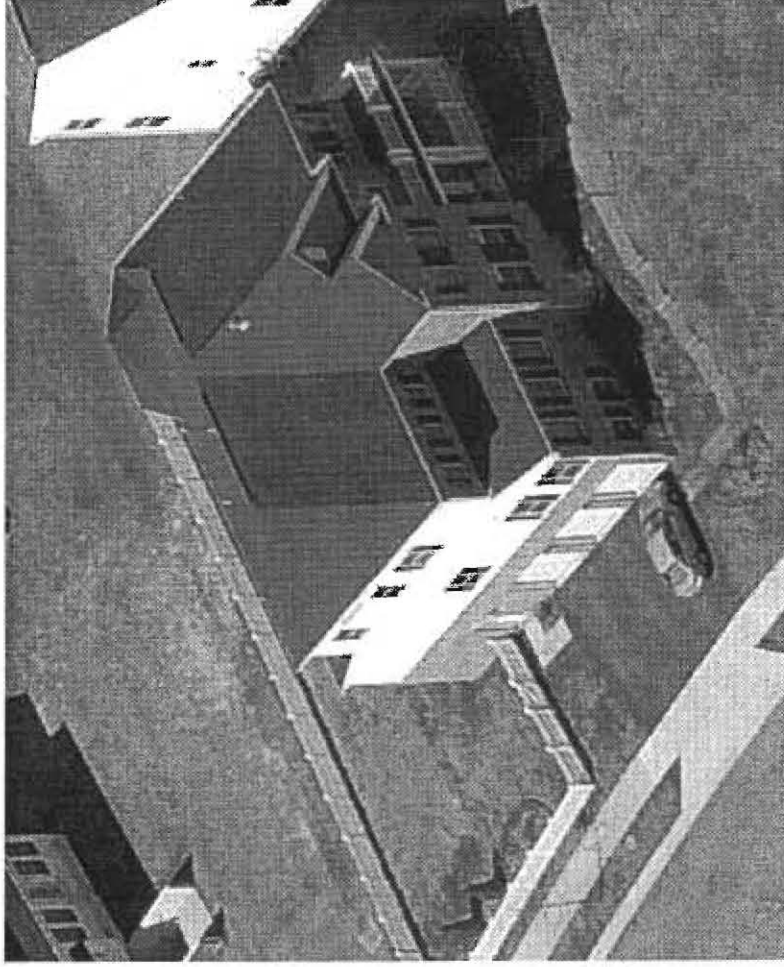
| | |
|----------------------|---------|
| Impervious Area (sf) | 1,287 |
| FY 13 Charge: | \$92.60 |
| FY 14 Charge: | \$43.45 |
| Savings: | \$49.15 |

Typical Home in Tier 3



| | |
|----------------------|---------|
| Impervious Area (sf) | 2,372 |
| FY 13 Charge: | \$92.60 |
| FY 14 Charge: | \$86.90 |
| Savings: | \$5.70 |

Typical Home in Tier 4



| | |
|----------------------|----------|
| Impervious Area (sf) | 3,712 |
| FY 13 Charge: | \$92.60 |
| FY 14 Charge: | \$86.90* |
| Savings: | \$5.70 |

*Due to phase-in, this home would be dropped to Tier 3

Typical Home in Tier 5



| | |
|----------------------|----------|
| Impervious Area (sf) | 5,367 |
| FY 13 Charge: | \$92.60 |
| FY 14 Charge: | \$86.90* |
| Savings: | \$5.70 |

*Due to phase-in, this home would be dropped to Tier 3

Typical Home in Tier 6



| | |
|----------------------|-----------|
| Impervious Area (sf) | 6,111 |
| FY 13 Charge: | \$92.60 |
| FY 14 Charge: | \$130.35* |
| Increase: | \$37.75 |

*Due to phase-in, this home would be dropped to Tier 4

Typical Home in Tier 7

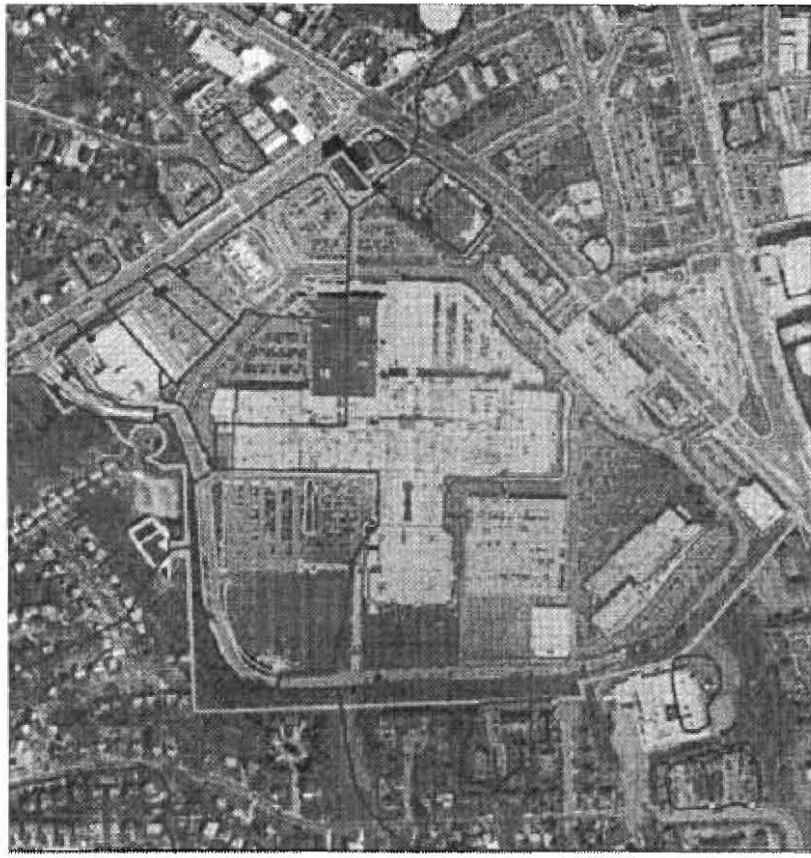


| | |
|----------------------------|-----------------|
| Impervious Area (sf) | 19,529 |
| FY 13 Charge: | \$92.60 |
| FY 14 Charge: | \$260.70 |
| Increase (Savings): | \$168.10 |

Non-residential Distribution in FY14

| Impervious Area | Charge @\$86.90/ERU | # of Properties | Cum. Pct. |
|-------------------------------|-----------------------|-----------------|-----------|
| >0 and <=1,000 sf | >\$0, <=\$36 | 1,185 | 13.91% |
| >1,000 and <=2,000 sf | >\$36, <=\$72 | 641 | 21.43% |
| >2,000 and <=3,000 sf | >\$72, <=\$108 | 518 | 27.51% |
| >3,000 and <=4,000 sf | >\$108, <=\$144 | 447 | 32.76% |
| >4,000 and <=5,000 sf | >\$144, <=\$181 | 385 | 37.28% |
| >5,000 and <=6,000 sf | >\$181, <=\$217 | 307 | 40.88% |
| >6,000 and <=7,000 sf | >\$217, <=\$253 | 242 | 43.72% |
| >7,000 and <=8,000 sf | >\$253, <=\$289 | 224 | 46.35% |
| >8,000 and <=9,000 sf | >\$289, <=\$325 | 198 | 48.67% |
| >9,000 and <=10,000 sf | >\$325, <=\$361 | 174 | 50.72% |
| >10,000 and <=20,000 sf | >\$361, <=\$722 | 1,217 | 65.00% |
| >20,000 and <=30,000 sf | >\$722, <=\$1,084 | 837 | 74.82% |
| >30,000 and <=40,000 sf | >\$1,084, <=\$1,445 | 536 | 81.12% |
| >40,000 and <=50,000 sf | >\$1,445, <=\$1,806 | 322 | 84.89% |
| >50,000 and <=60,000 sf | >\$1,806, <=\$2,167 | 239 | 87.70% |
| >60,000 and <=70,000 sf | >\$2,167, <=\$2,528 | 154 | 89.51% |
| >70,000 and <=80,000 sf | >\$2,528, <=\$2,889 | 130 | 91.03% |
| >80,000 and <=90,000 sf | >\$2,889, <=\$3,251 | 86 | 92.04% |
| >90,000 and <=100,000 sf | >\$3,251, <=\$3,612 | 92 | 93.12% |
| >100,000 and <=200,000 sf | >\$3,612, <=\$7,224 | 369 | 97.45% |
| >200,000 and <=300,000 sf | >\$7,224, <=\$10,835 | 105 | 98.69% |
| >300,000 and <=400,000 sf | >\$10,835, <=\$14,447 | 48 | 99.25% |
| >400,000 and <=500,000 sf | >\$14,447, <=\$18,059 | 29 | 99.59% |
| >500,000 and <=600,000 sf | >\$18,059, <=\$21,671 | 11 | 99.72% |
| >600,000 and <=700,000 sf | >\$21,671, <=\$25,283 | 7 | 99.80% |
| >700,000 and <=800,000 sf | >\$25,283, <=\$28,894 | 6 | 99.87% |
| >800,000 and <=900,000 sf | >\$28,894, <=\$32,506 | 6 | 99.94% |
| >900,000 and <=1,000,000 sf | >\$32,506, <=\$36,118 | 1 | 99.95% |
| >1,200,000 and <=1,300,000 sf | >\$43,342, <=\$46,953 | 1 | 99.96% |
| >1,300,000 and <=1,400,000 sf | >\$46,953, <=\$50,565 | 1 | 99.98% |
| >1,400,000 and <=1,500,000 sf | >\$50,565, <=\$54,177 | 1 | 99.99% |
| >2,300,000 and <=2,400,000 sf | >\$83,071, <=\$86,683 | 1 | 100.00% |

Currently Associated Non-Residential



| | |
|----------------------|-----------|
| Impervious Area (sf) | 2,774,955 |
| FY 13 Charge: | \$81,059 |
| FY 14 Charge: | \$84,122* |
| Increase: | \$3,063 |

LEGEND

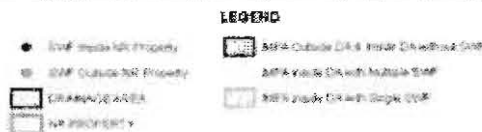
| | |
|------------------------------|--|
| • 100% Impervious Property | 100% Impervious (100% & Above) 100% Impervious |
| □ 100% Outside 100% Property | 100% Outside 100% Property |
| □ 100% Inside 100% Property | 100% Inside 100% Property |
| □ 100% Property | 100% Property |

*Due to phase-in, this property would only pay 1/3 of the increase

Non-Residential (Currently Not Paying)



| | |
|----------------------|-----------|
| Impervious Area (sf) | 1,208,326 |
| FY 13 Charge: | \$0 |
| FY 14 Charge: | \$14,547* |
| Increase: | \$14,547 |



*Due to phase-in, this property would only pay 1/3 of the increase

Faden, Michael

From: Wilson, Walter
Sent: Wednesday, April 03, 2013 3:50 PM
To: Faden, Michael
Cc: Boucher, Kathleen; Shofar, Steven; Wan, Vicky; Hoyt, Bob
Subject: Revisions to Bill 34-12
Attachments: Bill 34-12rvsd040313.doc

Mike:

Per your request that I isolate the changes that we are adding to Bill 34-12 rather than prepare a new document to enable you to put the bill in final form, I am providing the following description of the changes. For your reference, I have attached an updated redline with the expedited bill provisions added. Please let me know if there is anything else that you need me to provide.

Under Section 19-21, insert the definition for “non-profit organization” as follows:

Nonprofit organization: A corporation, foundation, or other legal entity that is exempt from income taxation under Section 501 (c) (3) of the Internal Revenue Code.

Under Section 19-35 (e) (1), insert a colon after “if” at line 167, create subparagraphs (A) and (B) from the rest of the sentence, and add new subparagraphs (C) and (D) so that paragraph (1) reads as follows:

- (1) A property owner may apply for, and the Director of Environmental Protection must grant, a credit equal to a percentage, set by regulation, of the Charge if:
 - (A) the property contains a stormwater management system that is not maintained by the County;
 - (B) the owner participates in a County-approved water quality management practice or initiative;
 - (C) the property treats off-site drainage from other properties located within the same drainage area; or
 - (D) the property does not contain a stormwater management system, but is located within the same drainage area as another that contains a stormwater management system and both properties have the same owner.

Create paragraph (2) at line 178 under Section 19-35 (e), renumber paragraph (2) as (3) at line 183, and replace “Director of Environmental Protection” with “Director of Finance” at line 189 under renumbered paragraph (3) so that they read as follows:

- (2) To receive the credit, the property owner must [[submit a request]] apply to the Director of Environmental Protection in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due. Any credit granted under this subsection is valid for 3 years.

- (3) The owner of an owner-occupied residential property, or any non-profit organization, that can demonstrate substantial financial hardship may apply for an exemption from all or part of the Charge for that property, based on criteria set by regulation. The owner or organization may apply for the exemption to the Director of Finance not later than April 1 of the year when payment of the Charge is due.

Under the "Implementation" part of the bill (Sec. 2 at line 217), I removed "effective date" from the heading, since this will now be an expedited bill, along with "This Act takes effect on July 1, 2013" from subsection (a). I then added "Sec. 3. Expedited Effective Date." That section reads as follows:

Section 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This act takes effect on the date when it becomes law.

Walter E. Wilson
Associate County Attorney
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
240-777-6759

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